JUDGEMENTS ON THE POVERTY AND STARVATION DEATH IN KALAHANDI

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INTRODUCTION

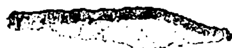
This Publication contains the Judgements of the Supreme Court of India, the High Court of Orissa and the proceedings of the National Human Rights Commission relating to issues of grave importance, that is the miserable conditions of the people in the District of Kalahandi, Nuapada and Balangir. There are starvation deaths, large scale exploitations of the poor tribals, sale of children and mass exodux. Despite promises made before the Hon'ble Supreme Court of India by the State Government of Orissa, the miseries of the people have remained unchanged for which again an Enquiry Committee was set up by the High Court of Orissa and the Enquiry report exposes the alarming and sordid situation in the said Districts. The Judgements of the highest Judiciary are heart rendering and the observations of the High Court of Orissa are salutory. Proceedings have been taken up again before the Supreme Court of India by Social activists and ultimately the matter was referred to the National Human Rights Commission, the proceedinss of which are part of this booklet.

This publication become necessary because of the enormity of the situation prevailing in the districts of Kalahandi, Nuapada and Balangir more particularly when the repeated directions of the highest Courts of the Country have not been implemented with impunity.

I personally feel it as a patriotic duty to bring to the notice of thousands of our brothers and sisters of the Country about the un-precedented human sufferings and calamities afflicting the people of Kalahandi when we are celebrating the 50th Anniversary of our independence. The highest Judiciary of the State as well as the Apex Court have been touched by the conditions prevailing in the District of Kalabandi. The situation calls for resonance from the pe[illegible] there is awarness by the rulers of this C ntry to a[illegible] the situation before a total catastrophe.

Rabi Dash

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In the Supreme Court of India,

NEW DELHI

MURARI MOHON DUTT, J
AND
K. N. SAIKIA, J

Writ Ptn. No. 12847 of 1985 and 1081 of 1987, D/9-1-1989.

Kishen Pattnayak and another — Petitioners
v.
State of Orissa — Respondent.
With
Indian People's Front Through its Chairman
Nagbhushan Patnaik — Petitioner
v.
State of Orissa and others — Respondents.

Constitution of India, Arts. 32, 226, 38, 39—Public Interest litigation—Starvation deaths due to poverty—Government's duty to prevent—Directions issued by Supreme Court to re-constitute Natural Calamities Committee—Various steps and social welfare measures being taken by government for mitigating hunger, poverty and starvation deaths—Natural Calamities Committee directed to keep watch on measures taken and which may be taken in future.

Orissa Relief Code, Paras 39, 40 — Starvation deaths due to poverty — Goyernment's duty to prevent — Public interest litigation (Paras 12, 20) — Starvation deaths.

Mr. R. B. Mehrotra, Amicus-Curiae, Shri Kishen Pattnayak in person, and Mr. Ranjan Dwivedi, Advocates, for Petitioners; Mr. G. Rath, Advocate General, Orissa, R.K. Mehta, Mr. Indrajit Roy, Ms Mona Mehta, Mr. K.R. Nagaraja Mr. R. K. Mehta and Ms. Madhu Moolchandani, Advocates, for Respondents.

DUTT, J. :— Writ Petition (Civil) No. 12847 of 1985 has its origin in a letter written by Shri Kishen Pattnayak and Shri Kapil Narayan Tiwary, two social and political workers, addressed to the Hon'ble Chief Justice of India. In this letter, they have brought to the notice of this Court the miserable condition of the inhabitants of the district of Kalahandi in the State of Orissa on account of extreme poverty. It is alleged that the people of Kalahandi in order to save themselves from starvation deaths, are compelled to subject themselves to distress sale of labour on a large scale resulting in exploitation of landless labourers by the well-to-do landlords. It is alleged that in view of distress sale of labour and paddy, the small peasants are deprived of the legitimate price of paddy and they somehow eke out their daily existence. Further, their case is that being victims of 'chill penury', the people of Kalahandi are sometimes forced to sell their children It has been prayed that the State Government should be directed to take immediate steps for the purpose of ameliorating the misery of the people of the district of Kalahandi.

2. On receipt of the said letter, this Court directed the same to be treated as a writ petition and it was registered as such.

3. Another writ petition being Writ Petition (Civil) No. 1081 of 1987 has been filed by the Indian People's Front. This writ petition not only relates to the misery of the people of Kalahandi, but also of the people of another district, namely, the district of Koraput. In this writ petition, it has been alleged that the starvation deaths of the inhabitants of the districts of Koraput and Kalahandi are due to utter negligence and callousness of the administration and the Government of Orissa. It is alleged that the starvation deaths, drought, diseases and famine have been the continuing phenomena in the said two districts since 1985. The Government of Orissa has been accused of utter failure to protect the lives of the people of the two districts.

4. The State of Orissa appeared in both these writ petitions and opposed the same by filing counter-affidavits denying the allegations of the petitioners. The State of Orissa filed two statements one dated October 20, 1986 consisting of 160 pages and the other dated December 1, 1986 consisting of 181 pages. In these statements, it has been alleged by the State of Orissa that the State Government has implemented the social welfare measures in the district of Kalahandi.

5, In order to ascertain the correct state of affairs, this Court by its order dated January 16, 1987 requested the District Judge of Kalahandi to enquire as to whether the State Government has, in fact, implemented the social welfare measures in the district of Kalahandi and whether such measures were adequate to meet the needs of the people there. The learned District Judge was asked to submit a report to this Court. It was further directed by this Court that the learned District Judge, while preparing his report, would consider the feasibility of the implementation of some suggestions made by the petitioners regarding the steps to be taken for the purpose of ameliorating the condition of the people in the said district.

6 The learned District Judge has since submitted his report which runs into 361 pages. The petitioners are not at all satisfied with the said report of the learned District Judge. They have challenged the correctness of facts found by him, particularly with regard to the question of starvation deaths. It has been stated by the learned District Judge that there was hardly any case of starvation death; on the other hand, there has been implementation by the Government of the social welfare measures.

7. We do not think it necessary to consider the report of the learned District Judge. It is agreed by the parties including Shri Pattnayak, the petitioner No. 1 in Writ Petition No. 12847 of 1985, who has appeared before us in person, that some steps should be taken for the purpose of

alleviating the miseries and sorrows of the poor inhabitants of both the said districts. It is not disputed that the people of the districts of Kalahandi and Koraput are very poor and most of them have been living below the poverty line. Although the learned District Judge's report is against the alleged starvation deaths, we are of the view that the happening of one or two cases of starvation deaths cannot altogether be ruled out. Shri Pattnayak laid much emphasis in his submissions on the duty of the Government to take immediate steps to prevent starvation deaths. He has submitted before us some suggestions in writing. So far as prevention of starvation deaths is concerned, his suggestions are inter alia that the Government should constitute a 11-Member Committee, of which the majority should be social workers, for the purpose of supervising matters arising out of drought and other natural calamities. This committee may be called the Kalahandi Relief Implementation Committee (KRIC). The non-official members should not be members of any political party and should belong to wellknown organisations of social work, such as, Sarvodaya, Gandhi Peace Foundation and registered voluntary agencies, as contained in the State approved list of voluntary agencies. He has also enumerated the duties of the Committee.

8. The learned Advocate General of Orissa, appearing on behalf of the State of Orissa, has drawn our attention to paragraph 39 of the Orissa Relief Code which provides as follows :—

"**39. Reports on starvation —**

(i) "In spite of taking adequate precautions in providing relief works for able-bodied persons, and gratuitous relief and feeding programmes for those who cannot undertake physical labour and other relief measures, reports of starvation cases very often appear in the press. Whenever a report of death due to starvation is published and it comes to the notice of

the Collector, he shall immediately cause an enquiry into the allegation. The enquiry shall be conducted by a gazetted officer in the presence of the Sarpanch, Ward Members or some gentlemen of the village and the result of the enquiry reported in the Proforma in Appendix VI within 48 hours, if possible. The Proforma is not exhaustive. The Collector should include such other information which he considers necessary to give Government a complete picture of the situation in which the alleged death has taken place. If all the information cannot be collected forthwith a preliminary report should be furnished immediately to be followed by a complete report soon.

(ii) After the receipt of the enquiry report, the Collector shall review the relief measures undertaken in the area and also if he deems proper, may visit the area himself or depute a senior officer to take stock of the situation and be satistied about the adequacy of labour employment, food position, and other relief arrangements. He should take further steps to alleviate distress in the area as far as possible. In case he considers necessary to further strengthen the relief measures, he shall furnish concrete proposals promptly with necessary justification through the Revenue Divisional Commissioner to the Board of Revenue / Special Relief Commissioner".

9. In this connection, we may also refer to paragraph 40 relating to verification of Press reports and issue of contradiction, if any. Paragraph 40 reads as follows :—

40. Verification of Press report and issue of contradiction, if any —

"Besides alleging starvation deaths, reports on large scale migration of population on account of lack of work, scarcity of drinking water, outbreak of epidemics etc, appear in the Press very often. The Collector shall take steps to get such reports immediately verified by proper enquiry or otherwise and if found true should take immediate remedial

action. Proper publicity relating to the relief measures undertaken should also be given. If on the other hand, the report is found inaccurrate, exaggerated or incorrect a contradiction stating the correct facts may be issued by the Collector immediately. Copies of such contradictions should be made available to the higher authorities".

10. It is apparent from paragraph 39 that ample provision has been made for taking steps as soon as the report of starvation death is published or any starvation death comes to the notice of the Collector.

11. It is also submitted by the learned Advocate General that there is a district level Natural Calamities Committee consisting of the Collector, other officials and the popular representatives like MPs and MLAs of the district, who are required to review the progress of relief work and the measures taken to meet the drought conditions from time to time. He submits that instead of constituting another Committee, the Natural Calamities Committee will serve the purpose. Shri Pattnayak also agrees that another separate Committee need not be constituted, but he submits that the Natural Calamities Committee should include at least five non-official and non-political members belonging to well-known organisations of social work, such as, Sarvodaya, Gandhi Peace Foundation and registered voluntary agencies, as already suggested by him. The learned Advocate General states that the Government has no objection to induct into the Committee non-officials, such as representatives of the recognised voluntary organisations as suggested by Shri pattnayak.

12. In the circumstances, we direct the Government of Orissa that it shall, within a month from date, nominate the names of at least five persons belonging to the recognised voluntary organisations like Sarvodaya, Gandhi Peace Foundation, Ramakrishna Mission, Bharat Sewa Sangha and registered voluntary agencies as members of the said Natural

Calamities Committee of the district. We also accept the suggestion of Shri Pattnayak that the Committee shall hold at least one meeting every two months. The function of the Committee will not be confined only to the cases of starvation deaths, but it shall be responsible for looking after the welfare of the people of the district.

13. We are given to understand that there is also such a district-level Natural Calamities Committee in the district of Koraput. We make it clear that the Government will also nominate at least five such persons belonging to recognised voluntary organisations within a month from today and the Committee will also perform the same functions.

14. So far as the district of Kalahandi is concerned, it has been urged by the learned Advocate General that the Government of Orissa has already undertaken appropriate measures for mitigating the miseries of the people of that district, The steps which have been taken by the Government may be stated in brief. The State Government has allotted a sum of Rs. 8054 lakhs for Kalahandi during the Sixth Plan. The State Government is fully aware of the situation in Kalahandi and constant vigilance is maintained under the direct supervision of the Chief Minister to redress the distress of the people. The labour intensive work has been undertaken by the government on a massive scale to provide employment opportunity to the people of the district of Kalahandi. During the year 1984-85, in areas of acute distress, free feeding programme has been undertaken on a massive scale. During 1987-88 the coverage under the Normal persons were also covered under the Emergency Drought Feeding Programme covering all the drought affected areas of the district. In 128 Gram Panchayats where crop damage was more than 50%, 1,20,000 persons were covered under the Emergency Feeding Programme during 1987—8. During the current year, preliminary survey indicated that crop damage was likely to occur in 74 Gram Panchayats and, accordingly, 40,000 persons

from the said affected areas have been covered under the Emergency Feeding Programme in addition to the Normal feeding Programme for 2,12,800 person. Under the Area Development Approach Programme for Total Backwardness Scheme covering certain blocks, about 20,000 persons are being fed under the Feeding Programme. According to the Government, 2,72,000 persons are being covered by the Feeding Programme in Kalahandi district in 1988.

15. Kalahandi is a drought-prone district and Government has, according to the learned Attorney General, already taken a number of major,medium and small Irrigation Projects in the said district to provide irrigation facilities for agriculturists. 485 tube-wells are stated to have been dug as a major source of drinking water in Kalahandi. The Government has also started afforestation programme so as to prevent the recurrence of drought conditions.

16. Much facilities are stared to have been given to the weavers of the district.

17. Elaborate measures have also been taken for ensuring that poor cultivators are not coerced to sale their surplus paddy at a lower rate on account of their poverty. The Orissa Agricultural Produce Marketing Act is being strictly implemented. The entire procurement of paddy has been entrusted to the Food Corporation of India and the State Cooperative Marketing Federation. These two Organisations specialised in such purchases, are possessed of godowns and have their local centres throughout the State for purchase of surplus paddy. The FCI at the request of the State Government, has established purchase centres at Junagarh, Khariar Road and Kesinga in the district of Kalahandi. The FCI has also made arrangements for direct purchase of paddy at Dharmagarh, Junagarh and Narala. The State Cooperative Marketing Federation has also opened direct purchase centres at Boden and Sinapalli in the district of Kalahandi. Furthermore, when surplus paddy comes to

market, additional purchase centres are provided for purchase of the surplus paddy.

18. The minimum purchase price for paddy is fixed by the Government of India. Adequate funds are provided to the purchasing agents to purchase the surplus paddy at the rates prescribed by the Government. State Government also ensures that unscrupulous traders do not coerce the farmers to sell paddy at a distress price.

19. Assistance to agriculturists is also being given by the Government. Due to drought conditions, the Kharif crop was damaged in some areas of Kalahandi district in 1987-88. To enable cultivators to undertake resowing, Government is stated to have supplied seeds free of cost in mini-bags.

20. The measures which have been taken and are being taken, as stated in the writen note submitted by the learned Advocate General, have been briefly mentioned. There is no reason not to accept the statements made on behalf of the State of Orissa that the measures, stated above, are being taken for the purpose of mitigating hunger, poverty, starvation deaths, etc. of the people of Kalahands. If such measures are taken, there can be no doubt that it will alleviate to a great extent the miseries of the people of Kalahandi. Such measures are also being taken in respect of the district of Koraput. The Natural Calamities Committee shall also keep a watch over the working of the social welfare measures which are being taken and may be taken in future. Shri Pattnayak also does not dispute that if such measures are continued to be taken, it will be a great relief to the people of Kalahandi and Koraput. We hope and trust that in view of the prompt action that has been taken by the Government, soon the miseries of the people of these two districts will be over.

21. As prayed for by Shri Pattnayak, the petitioners are granted liberty to mention before this Court if necessary.

22. The writ petitions are disposed of as above. There will be no order as to costs.

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Order accordingly.

IN THE HIGH COURT OF ORISSA, CUTTACK

ORIGINAL JURISDICTION CASE NO. 3517 OF 1988
AND
ORIGINAL JURISDICTION CASE NO. 525 OF 1989

In the matter of applications under Articles 226 and 227 of the Constitution of India.

Bhawani Mund (In OJC 3517/88)
Anukul Chandra Pradhan (In OJC 525/89) ......Petitioners

—versus—

State of Orissa & others ......Opposite Parties

For Petitioners : Shri Bijan Ray
S. Das, B. Mohanty,
J. Patnaik &
Milan Kanungo
and
Shri Anukul Chandra Pradhan

For Intervenor : Shri H. S. Misra

For Opp. Parties : Shri R. K. Patra,
Government Advocate

PRESENT :

THE HON'BLE THE CHIEF JUSTICE SHRI B. L. HANSARIA
AND
THE HON'BLE SHRI JUSTICE B. N. DASH

Date of final hearing : 23-1-1992 Date of judgment : 12-2-1992

HANSARIA, C. J.

Kalahandi is one of the thirteen districts of the State. Bolangir is another. In these two districts, which form western part of the State, tribals are in majority. Poor as they are, their miseries know no bounds when they become victims

of natural calamities. Exploited as they are, when nature also turns against them in the form of drought, they have none else other than the democratic Government to come to their rescue.

2. This is not for the first time that a judicial body has been called upon to do whatever is possible within the constitutional framework after hearing the tale of woes of the poor inhabitants of Kalahandi who number 15,91,984 as per the provisional figure of 1990-91 census. Of course, Bolangir (with a population of 17,03,755) is before the Court for the first time. When such a large segment of population feels oppressed due to various forms of exploitation, to be tortured further by the vagaries of nature, the Government, who in our constitutional set up, has to look after the welfare of the down-trodden, has to come out in a big way to save people from starvation deaths, distress sale of children and other forms of gross extinction and violation of the rights conferred on every citizen of India by the Constitution.

3. Kalahandi was once in the news in 1985. Two public spirited individuals then wrote letters to the Hon'ble Chief Justice of India drawing his attention to the miserable condition of the inhabitants of the district because of extreme poverty. The Court rose to the occasion and taking cognizance of the letters started a judicial proceeding which resulted in the case of Kishan Pattanayak v. State of Orissa, AIR 1989 SC 677. After hearing the Advocate General for the State and other concerned parties, the Supreme Court gave direction to properly reconstitute the Natural Calamities Committee as indicated in paragraph 12 of the judgment. From the affidavit filed by the Unddr Secretary to the Government of Orissa in the Revenue Department on 3-2-1992, we find that pursuant to the aforesaid direction, the District Natural Calamities Committee has been reconstituted with the representatives of (1) VISWAS, Khariar Road, (2) FARR, Biswanathpur, (3) SARVODAYA SAMITI,

Dharamgarh, (4) THRIVE, Thuamul-Rampur, and (5) LOKDRUSTI, Khariar. We would like that a similar committee should be constituted for the district of Bolangir. Necessary steps in this regard shall be taken expeditiously. This committee shall also meet as indicated in the judgment of the Supreme Court and its functions shall also be of the type which are to be discharged by the Kalahandi Committee, as desired in the aforesaid judgment of the Supreme Court.

4. Kalahandi was again in the news in 1988. This time this Court took cognizance of the matter on a newspaper report published in The Sun Times of 17th October, 1988 captioned "When will the exploitation end ?" coming to its notice which was sent to it by one Bhawani Mund. The result was the starting of O.J.C.No. 3517 of 1988. An advocate of this Court also came forward to bring certain distressing facts to the notice of the Court which gave rise to O.J.C. No. 525 of 1989. Need was felt to delve deep because of the shocking revelations made in aforesaid communication which resulted in the appointment of one of our capable retired District Judges, Shri Baidyanath Misra, to look into the matter and to submit his report. Order to that effect was passed on 2-8-1990. Shri Misra took up the work in the right earnest and prepared his report on 16-3-1991 which runs into seventy-five pages to be supplemented by two further pages. After the report was received, time was granted to the State to have its say on the report, as Shri Misra had found various laches on the part of the administration. The State filed its "objection" on 4-11-1991, whereafter the Court was addressed by the concerned counsel on 23-1-1992—this delay having been caused principally due to non-availability of Shri Patnaik for a long time due to his illness.

5. We shall confine our attention to certain important aspects which have come to light following the inquiry held by Shri Misra.

(1) Starvation deaths

(a) The report states about death of five persons, namely, (1) Sukha Jani (50), (2) Pamuli Sabar, (3) Parbati Sabar, (4) Musila Sabar, and (5) Bondiki Sabar due to starvation. Of these persons, Sukha was a resident of Deypur, and the remaining four of Sindhibhadi. The conclusion regarding the death of these five persons due to starvation is well founded. As to Sukha Jani, the case of the administration was that he had died due to jaundice, as stated in letter No.1195/ (Emg. dated 6-8-1986) of the Collector addressed to the Government in the Revenue Department. Reference has been made in this connection in paragrah 39 of the report about the information given by the Sarpanch under his letter No. 158 dated 30-6-1989 to the Collector that the Adivasi family of Sukha Jani was starving since about a month without being able to earn anything. The Sarpanch brought the matter to the notice of the Block Development Officer (B.D.O.) also by sending a copy of the report through a special messenger after he had visited the house of Sukha and was satisfied about the fact that Sukha and other members of his family were starving. But before the administration did anything, Sukha Jani died. The Additional Tahasildar went to the village thereafter and gave some help to Sukha's mother and wife. In paragraph 50 it has been observed that "obviously Sukha Jani died due to want of food and nutrition which might have caused 'Jaundice' in the ultimate terminal stage." We do not find any reason to disagree with this observation.

(b) In so far as the four other persons are concerned, the fact of their death due to starvation has duly been testified by a large number of villagers who had gathered to meet Shri Misra when he visited the village on 21-12-1990 in the company of the B D.O., Shri D. Majhi. The statement which the villagers made was "କିଛୁ ଖାଇବାକୁ ନ ପାଇ ମରିଗଲେ ।" which conveys the clear idea that the deaths were due to starvation. (See paragraph 41 of the report.) The fact of death of these

four persons due to starvation had been brought to the notice of the B.D.O. on 20-2-89 by the villagers in a letter addressed to the B.D O., which they gave to the Sarapanch. In that letter, the villagers further stated that 7 or 8 persons, whose names were mentioned therein, were about to die of starvation unless necessary steps were taken by the Government. The Sarapanch forwarded the letter to the B.D.O. What action was taken by the B.D.O could not be known to the Inquiring Judge.

(c) In this connection, we have to say something about the complete apathy shown by the district administration in the matter. Under the Orissa Relief Code, an obligation has been cast on the Collector to immediately cause an inquiry by a gazetted officer and report the matter to the Government in case news of starvation death is reported in the press and comes to the notice of the Collector, as laid down in Rule 39. He is also required to review the relief measures and to take further steps to alleviate the distress. In the present case, there were press reports (see paragraph 37 of the report) and the matter had been brought to the notice of the collector by the Tahasildar (a gazetted officer), despite which the Collector did nothing to ameliorate the distress. Not only this, the Collector failed to exercise his duties in the light of what has been prescribed in Chapter X of the Relief Code which, inter alia, enjoins that the Collector will be the temporary guardian of the children who are rendered orphan due to natural calamities. In the present case, two children of Bondiki and Parbati who had died due to starvation had become orphan. While on this subject, we may say that after the report was received by this Court, we expressed our concern at the total helplessness of the two children, namely, Saraswati Sabar and Kanta Sabar. We desired the learned Government Advocate to immediately take up the matter with the Collector. On this being done, the Collector moved and took steps for admitting the two children in the orphanage, about which we were informed on 7-10-1991.

(d) The question for our consideration now is what relief we can rightly and justly give to the families of the unfortunate victims of starvation. Shri Patnaik submited that in such cases normal rule of tortious liability is not followed, which was the view taken in M. C. Mehta V. Union of India, AIR 1987 SC 1086, which was cited with approval by the Constitution Bench in Union Carbide Corporation v. Union of India, (1989) 3 SCC 38 (commonly known as Bhopal Gas Tragedy Case). In that case, the compensation on account of death was a sum of Rs. 2 lakhs in each case. Shri Patra submits that while deciding the quantum of compensation, we should bear in mind the financial constraints of the Government through which it is presently undergoing and refers in this connection to P. Nalla Thampy Thera v. Union of India, AIR 1984 SC 74, in which it was stated that while giving directions for payment of compensation, availability of resources has a material bearing.

(e) Before we quantify the compensation to be given, we would like to state that in law it is permissible to this Court to grant compensation in such cases. In Rudul Saha v. State of Bihar, AIR 1983 SC 1086, it was laid down that in exercise of its jurisdiction under Article 32, the Supreme Court can pass an order for payment of money in the nature of compensation consequential upon the deprivation of the fundamental rights to life and liberty of a person. It was stated that one of the telling ways in which the violation of the rights conferred by Article 21 can reasonably be prevented and due compliance with the mandate of Article 21 secured, is to mulct its violators in the payment of monetary compensation. What is within the power of the Supreme Court under Article 32 in such a matter would be available to this Court also in exercise of its jurisdiction under Article 226, because the remedy of Article 32 is available for enforcement of the fundamental rights, for which purpose an affected person can approach this Court also under Article 226. In Bhim Singh v. State of Jammu & Kashmir, AIR 1986 SC

494, the Supreme Court had awarded a compensation of Rs. 50,000/- when an M.L.A. had been illegally arrested while in route to the Assembly, resulting in the deprivation of his right to attend an impending assembly session, because the same was regarded as violation of the constitutional and legal rights of the petitioner. Reference may be made to People's Union for Democratic Rights v. State of Bihar, AIR 1987 SC 355 also, in which a prayer was made to direct payment of full and proper compensation to the victims of police firing. The Court having found that the firing was unjustified, ordered for payment of a sum of Rs. 20,000/- for each case of death.

(f) The question for consideration is what amount of compensation should be awarded in the present case to the members of the families of those who were victims of starvation death. In this connection, we have to bear in mind that all the five victims belonged to the lower strata of the society inasmuch as four of them were members of Scheduled Caste and one was a poor Adivasi. From the materials on record, we do not know if the victims were the sole earning members of their families. We are, however, inclined to think that they were contributing their share to the upkeep and maintenance of their respective families. Though two of the deceased were females, we believe they must have also been assisting the male members in agricultural operations or by doing daily hazira work. Poor as the members of their families are, even a moderate amount of compensation would be of great help to them.

(g) Keeping in view all the above, we think a sum of Rs. 25,000/- as compensation for the death of each would be just and proper, and we order accordingly. As, however, Bonciki Sabar and Parbati Sabar belonged to one family, being husband and wife, in their case, a sum of Rs. 40,000/- in all would meet the requirements of justice. We may also say that as to Pamuli Sabar, we do not know about his age and occupation. So, while awarding the aforesaid amount in his favour, we would observe that it would be open to the State

to approach this Court for modification of this amount if it would be found that Pamuli was either too young or too old. The awarded amount shall be made available to the legal representatives of the deceased within two months from today.

(2) Sale of children

We have been deeply pained to know from the report about even sale of Prema, a girl aged about 16 years, of village Chhatrang in Bongomunda Block of Bolangir district. What is shocking is that the sale took place for a sum of Rs.50/-. Of course, the sale was not due to starvation, but was a case of explotation by the maternal uncle's son of Prema.

(3) Exploitation

(a) The report reveals existence of exploitation of poor tribals in various ways by money-lenders. What adds poignancy to the matter is that even some members of Scheduled Caste were found exploiting the members of Scheduled Tribe.

(b) From the objection filed by the Government, we find that what has come to light is only "a tip of the iceberg". It is heartening to note that the administration is alive to the situation and various types of actions are being taken to take care of the evils of exploitation of the poor by the well-to-do segment of the society.

(4) Mass exodus

Successive droughts coupled with the pitiable economic condition of the rural population of both the districts led to exodus in a large scale to the neighbouring States. Though migration of the people of these districts to the nearest towns and industrial areas to get lucrative wages during lean seasons followed by return to the native places at the time of agricultural operations seems to be a regular feature in these districts, but what happened in 1989 was far beyond the normal migration.

(5) Action taken by the Government

A perusal of the report and the statements made in the objection filed by the State shows that though the Government did come forward in aid of the people in distress by taking up various projects and disbursing substantial amount of money to various sectors, much remains to be done to pull up the residents of these districts from below the poverty line. A sum of Rs. 14, 19·621 lakhs was said to have been spent on various sectors, but how much of this money really reached the beneficiaries is the important question. Though a claim was made on behalf of the administration that 1,97,468 people had received benefits under various anti-poverty programmes, because of which 50 % of the total population of Kalahandi was brought above the poverty line, this claim has been regarded as 'fantastic' by the Inquiring Judge. The reason for this may be that though as per Government records, the aforesaid amount was spent, but as already indicated, the important question is what percentage of this amount reached the beneficiaries. Corruption at various levels, the curbing of which is one of the national priorities, is at the root of many evils, and we would state that precious little has been done in this regard by all concerned.

(6) Remedial measures

(a) The Inquiring Judge in his report has given some suggestions as to what can be done to come to the aid of the starving people of the two districts. We do not propose to repeat what has been stated in this regard in paragraphs 106 to 112 of the report. We would only commend to the Government to apply its mind to the suggestions finding place in these paragraphs and to adopt those which appear to it to be sound, workable and feasible. We would, in particular, require the Government to apply its serious mind to the suggestion finding place in paragraph 112 of the report about establishment of agro-based industries keeping in view the potentialities of the districts. Boyond this, we do not propose

to say anything in this regard, because the problem of 'chill penury' of the residents of not only these two districts but of the entire State is well known to all concerned and various agencies are involved in finding out what measures can and should be taken to come to the aid of the poor and the down-trodden. In public interest litigations of the type at hand, we have not deemed it advisable to give any particular direction keeping in view the magnitude of the problem and awareness of the same by all concerned leading to starting of various projects at different places and taking of other measures. Had it been a case of the type which came before the High Court of Himachal Pradesh (See State of Himachal Pradesh v. Umed Ram, AIR 1986 SC 847), we would have stated something more than commending the Government to apply its mind to the various suggestions given by the Inquiring Judge in his report, but the facts of the case do not justify giving of any particular direction.

(b) We would also however say that according to us some action is merited against the then Collectar, Kalahandi, who, on the face of the news of starvation death, failed to discharge his obligation. His inaction in coming to the aid of the two orphan children also needs to be enquired into.

(c) The report has brought to the fore the wretched condition in which the residents of the two districts spend their lives and we would feel amply rewarded if the task undertaken by the Inquiring Judge would make the district administration more alive towards its responsibilities and more active in using various legal weapons available to it to put an end to the exploitation going on in these districts.

6. We part with the hope that the people of Kalahandi and Bolangir districts would be better looked-after and if they would find themselves in distress, in future, the district administration and the Government would fulfil all their obligations towards the residents without there being complaint in this regard. In this connection, we may point

out that in Kishan Pattanayak's case, the Supreme Court had expressed a hope in paragraph 20 that in view of the prompt action taken by the Government, miseries of the people of the two districts (Kalahandi and Koraput) would be over. This hope has not materialised fully. We, therefore, call upon all the concerned persons to see that the hope expressed by the apex Court on 9-1-1989 in the aforesaid case materialises at the earliest.

7. Before closing, we would put on record our deep appreciation for the laborious work undertaken by Shri Misra in which he had received the co-operation of all concerned. We have also warm wards for Advocate Shri Pradhan, a member of the High Court Bar Association, who came forward feeling distressed at the wretched condition of the residents in moving this Court by filling a petition which gave rise to O.J.C.No.525/89. Shri Pradhan had toured various places to acquaint himself with the realities of the situation. He had also assisted Shri Misra in his inquiry pursuant to the order passed by this Court on 14-1-1991 in Misc. Case No. 6144/90 requiring him to incur travelling and other expenditure apart from forgoing his professional work for a few days. He made himself available to this Court too throughout the hearing of the cases. As a token of our appreciation for the works done by him, we direct the State Government to pay a sum of Rs.5000/—to Shri Pradhan within a period of one month. We also thank Shri Patra and Shri Patnaik who rendered valuable assistance to us.

8. The petitions are disposed of accordingly.

B. N. DASH, J. I agree.

Orissa High Court, Cuttack
February 12th, 1992

Report of Inquiry

in O.J.C. No. 3517 / 88 and No. 525 / 89

by Inquiry Judge Shri Baidyanath Mishra

(Extract from Report of Inquiry)

37. Starvation death is indeed a serious matter. 3 Instances are reported. One is Annexture-I, the news paper report which depicts photograph of Trilochan Sunani and Pat (Sunani) of village Darlipada in Komna Block of Kalahandi who are said to have died of starvation. Two other instances are reported by Sri A. C. Pradhan, Advocate in his report to Court after local visit of which one is of Sukha Jani of village Deypur in Bhawanipatna Block in support of which he has also filed news paper report (Samaja) dated 12-7-89 which is Annexture-2 (B) of his report where in it is alleged that authorities were trying to supress starvation death of Sukha Jani. The other incident relates to village Sindhibhadi under Badchherigaon Panchayat of Golamunda Block in Kalahandi district.

41, In their petitions they further stated that 7 or 8 persons whose names have been mentioned were about to die of starvation and unless necessary steps were taken by Government, those persons would die. The Sarpanch forwarded the same to the B.D.O. What action was taken by the B.D.O. there on is not known. I visited the village on 21-12-90 accompanied by the present B.D.O. Sri D. Majhi. About 80 villagers were present. All the villagers present stated that the 4 persons died because they could not get any food and that for some-time the villagers, equally poor, had helped them for sometime. The remaining starving persons they said were taken to the hospital by the authorities and so they were saved. The statement as such was recorded and literate persons have signed the statement. The statement was a surprise to the B.D.O. who was unaware of the incident. On the say, the Driver of the jeep said that he had brought the

starving villagers in the jeep to the hospital. The B.D.O. then made inquiries and obtaining report from the Primary Health Centre of Chaparia and forwarded the same to Collector. The report is that the persons brought to hospital were suffering from anaemia and were discharged after treatment. The statement of the villagers is clear and categorical that the persons died for want of food 'କିଛି ଖାଇବାକୁ ନ ପାଇ ମଇଗଲେ" which exactlys is starvation death as known in common parlance. The fact that the persons who were brought to hospital had anaemia suggests they had no food for long time and confirms the report of the villagers about starvation death of the afore mentioned persons. Nadia Tandi, the then Sarpanch, had forwarded the petition after inquiry. He also confirms the fact.

(105) It is seen therefrom that under the poverty alleviation scheme both IRDP and ERRP, 121 beneficiaries in village Palaada, 59 beneficiaries in village Khasbahal, 80 beneficiaries in village Amalapalli, 32 beneficiaries in village Karamahul and 50 beneficiaries in Mahulbhata have been covered. Having regard to the population of the villages such coverage is not adequate. As would be seen from the general review of the schemes as discussed before, there have been failure to a large extent for various reasons which needed not be repeated. Again to determine poverty income of Rs. 4800/—annually is being taken for the time being as poverty line. This represent expenditure necessary to manage a family of 4 member at the prevailing price level and in term of wages it comes to Rs. 10/— a day which will not be sufficient to meet minimum needs even for food. Droughts have shattered the economy resulting in migration of labour force to out side. The population explosion and high rise of prices of essential commodities has worsened the situation. Inevitably, the situation has gone from bad to worse. The developmental activities might have provided some labour employment which in official jargon is termed as mandays.

But visiting villages, I saw people living hand to mouth and in the houses of landless and labour class inhabitants, a morsel of grains could not be had for next day meal. For example in village Khasbahal the farmer class, because of good lands and better rains last year are happy but not others, and some villagers who have gone out side have not yet returned to the village. In Amalapalli, the landless who were provided houses, have deserted and have gone Raipur to work as rickshaw drivers. If that is the lot in the important villages, worse is expected in the others. Similar is the situation in the drought affected villages of Bolangir, (village profiles not supplied). The district administrations must there take more effective steps.

Conclusion and suggestions.

(106) The allegations as reported in news report in **"Sun Times"** dated 17-10-88 which were taken congnisance of by the High Court in O. J. C. No. 3517 / 88 that the Ex-Gountias and money lenders are exploiting the poor Adivasis of Kalahandi district and usurping their lands are true. The Tahasils of Th. Rampur and Lanjigarh are scheduled areas where Regulation 2 / 56 is in force. The Regulation protects the interests of the scheduled tribes (Adivasis) declaring null and void any transfer of land by a member of Scheduled Tribe in favour of any person not belonging to the tribe and empowers the competent authorities (Revenue Officers) to take action, even suo-motu, to annul such transfer and restore possession of the land to the tribal. Not withstanding such extra ordinary powers under the law, the district administration was unmindful of the problem till 1988, when the problem was high lighted and brought to their notice by AWARE, a Social organisation ; thereafter action was taken and some Adivasis who had lost their lands were restored to possession. Ironically, the exploiters in the scheduled areas are Harijans, another backward class being scheduled castes who appear to be economically slightly better than the tribals.

(107) Such exploitation by the Ex-gountias / money lenders exists also in the regular areas of the district of Kalahandi and also in the district of Balangir. Sections 22 and 23 of the Orissa Land Reforms Act are akin to Regulation 2 / 56 and even more potent, as they also protect the interest of scheduled castes (Harijans). Both the district administrations appear slack in the enforcement of these provisions of the O. L. R. Act and also other socially beneficial legislations the Orissa Money Lenders' Act and the Bonded Labour Act intended to control exploitation.

(108) The backward classes, either due to poverty or ignorance, fear and respect the ex-gountias as demi gods. The Government officials who can not be expected to be unaware of the exploitation by these rich ex-gountias do not take any action and seem to connive. Hence, direction may be issued to the State Government to direct the Revenue Officers to checkmate exploitation and usurpation of lands by ex-gountias money lenders duly observing the social legislations taking suo-motu action under Regulation 2 / 56 and O. L. R. Act. The officers of the welfare department should also be activated to work like social organisation to create awareness among the victims to assert their rights by legal and constituonal means.

(109) Beneficiaries taking loans under anti-poverty schemes are found unable to repay bank loan and complain that their debt burden increase because banks charge compound Interest. Banks can not be blamed for charging compound interest which they themselves pay to their depositors. In public interest, banks must recover the loans even resorting to coercive process of law which may cause harassment. Hence Government may devise a policy to liberalise recovery of socio-oriented loans either by reducing rate of interest or increasing number of instalments reducing their quantum providing a longer period for repayment. The Hon'ble Court may consider this suggestion, if deemed fit.

(110) As a result of repeated droughts, the rural economy in both the districts of Kalahandi and Bolangir has been shattered, and no wonder people suffered immense misery. Despite relief measures and developmental activities to provide labour employment which were not effective people suffered, and many including well-to do farmers had to sell their belongings for food and had to migrate to other States to seek employment. Evidence is available that some such persons have not yet returned to their villages and even now people are going out side for work. There was no sale of children to avoid starvation as alleged. No starvation deaths could be found in Bolangir district. However, 5 instances of starvation deaths in Kalahandi district came to light during inquiry. The death of 4 persons in February, 1989 in village Sindhibhadi in a short period and two of them (husband and wife) dying survived by a boy aged 8 years and a girl aged 5 years who are now orphans is most distressing. Surprisingly, the district administration is completely apathetic to the situation. After these deaths, the Tahasildar of Dharamgarh receiving the petition of villagers for help made some enquiry and sent a report to Collector enclosing details in proforma prescribed under Rule 39 of the Orissa Relief Code. In the report, though he opined that deaths were not due to starvation (which is incorrect), he gave a grim picture of the village and requested for immediate measures to provide employment to the people who are unable to have minimum earn for their meals. No attention was paid to the said report. As provided in Chapter-X of the Relief-Code, the Collector is deemed to be the temporary guardian of the orphans and it is his duty to take action for their proper rehabilitation in any established orphanage or otherwise. No action has been taken in this regard, probably because the Collector is unaware of the exitence of the orphans. Had he given personal attention to the report of the Tahasildar, he could have himself visited the village and realised the alarming state of affairs in the village

and he could have then come to know about the orphans. Gone are the days of administration by mechanically disposing of files in office rooms. Officers should be made to realise the gravity of human problems. The Hon'ble Court may bring this facts to the notice of Government and direct immediate rehabilitation of the orphans.

(111) Generally speaking, it will not be correct to say that Government is apethetic to the misery of the people following droughts, as Government have placed substantially large funds for developmental works and poverty alleviation schemes in both the districts. Placement of funds under the scheme for poverty termination ADAPT in the district of Kalahandi is a step in the right direction. It can not also be said the administration have not done any work or generate any employment to combat the calamity. However, huge amounts appear to have been spent hurriedly without proper planning and also faulty execution of projects resulting in wasteful expenditure as in the case of Water Harvest Structure made by Soil Conservation Department some of which serve no purpose, and Indira Awas Housing colonies which have collapsed or deserted; these are due to mismanagement and the waste could have been avoided. Leakage of funds and fraud can not also be ruled out. Similarly, there are instances of non-use and misuse of funds in anti-poverty schemes. Government is aware of such shortfall as is evident from reports of evaluation of IRDP and ERRP programmes made by Government (Planning and Co-ordination Department). Poverty continues as before, the misery being aggravated by droughts. Population explosion and high rise in prices raising limit of poverty line may also be contributory factors.

(112) Hence Government should take appropriate administrative measures for effective implementation of projects and programmes improving service infrastructure of the districts. Officers of proven good records dedicated to

public service be placed in the districts with offer of incentive if needed and the Collector who shall be made accountable for all round development should have fixed tenure at least of 4 years so as to be able to effectively oversee the implementation of projects. Mere generation of labour employment by projects would not control poverty; there must be generation of economy. There is no industry in the districts capable of absorbing the vast labour force.

Establishment of industries agro-based or otherwise having regard to the potentialities of the districts may be considered.

Inquiry Judge,
Bhawanipatna.

National Human Rights Commission

SARDAR PATEL BHAVAN

NEW DELHI

Case No 37 / 3 / 97-LD

Name of the Complainant : **Shri Chaturanan Mishra,**
Union Minister of Agriculture·

Reference Case No. 2 of 1997—Writ Petition (Civil) No. 42/97

Indian Council of Legal Aid & Advice & Others

VS.

State of Orissa & Others
(from the Supreme Court of India)

Date 17 February, 1998

CORAM

Justice Shri M.N. Venkatachalish, Chairperson

Shri Virendra Dayal, Member

Justice Shri. V.S. Malimath, Member

PROCEEDINGS

"Starvation is the characteristic of some people not having enough food to eat. It is not the characteristic of there being not enough food to eat."

Amartya Sen in "Poverty & Famines." 1981

I

1.1 On 28 December 1996, the Indian Council of Legal Aid and Advice and Others filed Writ Petition (Civil) No. 42 / 97 before the Supreme Court of India, under Article 32 of the Constitution, alleging that deaths by starvation continued to occur in certain districts of Orissa' despite the directives given by the Apex Court in its judgement in the case Kishen Pattnayak & Another vs. State of Orissa & Others (1989 Supp (1) SCC 258). The Writ Petition, a copy of which may be seen at Annexure 1, sought a number of interim reliefs from the Court.

1.2 When the Writ Petition came before the Supreme Court on 28 April 1997, the learned Counsel for the petitioner observed that the National Human Rights Commission was seized of the matter of reported deaths by starvation in these districts. He also referred ta a report prepared by a team that had been sent by the Commission to Orissa in that connection. He added that the report contained several recommendations and suggestions which, if acted upon, could serve to provide the interim measures needed to prevent the situation deteriorating in the affeeted districts. In its Order of 28 April 1997, the Supreme Court consequently stated :

The reference being to what are popularly known as the 'KBK Districts' which now, in fact, comprise the eight Districts of Kalahandi, Nuapada, Bolangir, Sonepur, Koraput, Malkangiri, Nawarngpur and Rayagada.

"It is, therefore, appropriate that we await the final report of the National Human Rights Commission for further action in this matter. The learned Advocate General stated that all directions given by the National Human Rights Commission, even when they are of an interim nature, would be promptly complied with by the State Government."

1.3 When the matter was listed again before the Supreme Court on 26 July 1997, the Hon'ble Court passed the following Order :

"In view of the fact that the National Human Rights Commission is seized of the matter and is expected to give its report after an enquiry made at the spot, it would be appropriate to await the report.

Learned Counsel for the petitioners submitted that some interim directions are required to be given in the meantime. If that be so, the petitioner is permitted to approach the National Human Rights Commission with its suggestion. So far as this Court is concerned, the matter would be considered even for this purpose on receiving the report of the National Human Rights Commission.

We also consider it appropriate to require the Union of India to appear before the National Human Rights Commission to assist the Commission in such manner as the Commission may require for the purpose of completion of the task of the Commission. The learned Addl. Solicitor General undertakes to ensure prompt steps being taken for this purpose."

1.4 Pursuant to this Order of the Supreme Court, the learned Counsel for the Indian Counsel of for Legal Aid and Advice filed a petition before the

Commission on 1 September 1997, making a number of suggestions in regard to interim reliefs (Annexure—11). Upon considering this petition, the Commission directed, on 3 September 1997, that notices be issued to all concerned and a letter be addressed to the Union Minister of Agriculture.

1.5 In the latter connection, it is pertinent here to observe that, on 3-4 December 1996, the National Human Rights Commission had considered a letter from Shri Chaturanan Mishra, Union Minister for Agriculture, concerning a recent visit by him to Orissa. The letter stated that while he was in Bolangir, some of the local MLAs and representatives of political parties had complained to the Minister of "starvation deaths during the present drought." The letter from the Minister enclosed a number of press reports alleging deaths by starvation, together with a list of some 26 cases, sent by the District Administration which asserted that the reported deaths had not occurred as a result of starvation, but had resulted from other causes. The Minister requested the Commission to go into the details of the situation and to undertake an investigation so that an accurate picture could emerge.

1.6 In considering the communication received from the Minister, together with its enclosures, the Commission observed that while the report from the District Administration appended to the Minister's letter took the view that the reported deaths had resulted from illness or natural causes, the press articles suggested the contrary. The Commission accordingly decided that, in the first instance, a team of officers, comprising the Secretary General and the Director General (Investigation) of the Commission should proceed to the affected area to collect the facts of the situation. Notice was also issued to the Chief Secretary, Government of Orissa, to report within four weeks.

1.7 Shortly prior to the departure of the team, the Commission also received a Joint Memorandum signed by seven

Members of the State Legislative Assembly, in which they listed 14 cases of death occurring allegedly as a result of starvation. The memorandum urged the Commission to intervene and to investigate all allegations of such deaths by starvation reported from the affected areas of the State.

1.8 In pursuance of the directions of the Commission, the Secretary General and Director General (Investigation) left Delhi for Orissa on 11 December 1996 and visited the districts of Nuapada, Kalahandi and Bolangir on 12-14 December, their supporting staff staying in the area until 17 December 1996 to gather further data. The team submitted its written report to the Commission on 2 January 1997, Annexure—III. After considering the report carefully, the Commission sought the comments of the State Government on it and also those of the Union Minister for Agriculture. The comments of the State Government were sent to the Commission on 29 April 1997, under cover of a letter from the Principal Secretary, Revenue and Excise-Department, the full text of that response may seen as **Annexure-IV.** Comments on behalf of the Union Minister for Agriculture were received from the Additional Secretary of that Ministry together with his letter of 22 October 1927, **Annexure - V.**

II

2.1 The allegations of deaths by starvation and the seemingly recurrent nature of this tragic occurrence in the 'KBK districts', raised issues that were both grave in implication and contentious in substance. After examining the report of its own team and the response of the State Government, and after reflecting on the petitions submitted by the Indian Council of Legal Aid and Advice and Others, the Commission therefore considered it important to conduct in-depth hearings on this entire matter, with the full involvement of all parties concerned. In so deciding, the Commission had in mind the need to lift the consideration of

this matter out of the adversarial and contentious cul-de-sac in which it might otherwise be trapped, and to transform it into a participative and constructive endeavour designed to develop a package of measures that, within a specified timeframe, would bring perceptible improvement to the lives of the afflicted population in the 'KBK districts'. In pursuit of this objective, the Commission accordingly held 11 hearings between 3 September 1997 and 29 January 1998, examining all aspects of the matter—an examination that included, inter alia, economic theories relating to starvation and famine, the economic, social and environmental history of Orissa-and of the 'KBK districts' in particular-over the past decades, the codes and criteria governing the conduct and reaction of State Government and the Centre to situations such as those obtaining in the 'KBK districts' and, above all, the practical measures that could be taken in the interim, and be dovetailed into Long-Term Plans, to end the scourge of deprivation, malnutrition and cyclical starvation in the districts concerned.

2.2 As the present petition before the Commission and the reliefs sought from the Supreme Court essentially request a series of interim measures, this Order of the Commission will concentrate primarily on such interim measures, leaving for subsequent consideration as may be needed, the views of the Commission on Long-Term issues.

2.3 This being said, the Commission would like to record, even in its present Order, its indebtedness to the pathbreaking and authoritative work of Professor Amartya Sen on the question of "Poverty and Famines" which has transformed the understanding of all those who must come to grips, whether on a theoretical or practical plane, with these grave problems. In particular, while considering the allegations of starvation in the 'KBK districts', the Commission had reason to recall Professor Sen's rigorous thesis, now known as the 'entitlement approach', to better appreciate the situation

under review. In that 'approach', Professor Sen had focussed on:

> "...the ability of people to command food through the legal means available in the society including the use of productive possibilities, trade opportunities, entitlements vis-a-vis the state and other methods of acquiring food",[2]

and he had observed.

> "Ownership of food is one of the most primitive property rights and in each society there are rules governing this right. The entitlement approach concentrates on each person's entitlements to commodity bundles including food, and views starvation as resulting from a failure to be entitled to a bundle with enough food."[3]

2.4 In such a view, it is inadequate to explain starvation simply in terms of food availability decline, 'the FAD' approach, or even in terms of the shortage of income and purchasing power. While the latter may be considered a rudimentary way of trying to catch the essence of the 'entitlement approach', it offers only a partial explanation. Properly understood, according to the 'entitlement approach', a person's ability to command food depends on what he owns, what exchange possibilities are offered to a person, and what is taken away from him or her. The Commission has kept this reasoning in mind in formulating its ideas on this case and, indeed, in setting out the interim measures that, in this Order, it recommends should be implemented in the 'KBK districts'.

III

3.1 The paragraphs that follow indicate the manner in which these interim measures have evolved and been decided upon, the scope of these measures and details concerning

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* Professor Sen, opus cited.

them. They also indicate the manner in which the interim measures should be implemented and the monitoring mechanisms that should be set in place in order to ensure the efficiency, integrity and accountability of the effort that must be made.

3.2 The starting point in devising the interim measures was, of course, an analysis of the observations contained in the report of the Commission's team (to which references were made in the petition before the Supreme Court and before the Commission itself), and of the comments received on that report from the State Government and the Union Ministry for Agriculture. While these documents may be seen in full as **Annexures**—III, IV & V, it is necessary here to recall the principal points raised by the Commission's team and the comments thereon :

(i) The Commission's team asserted that, because of the very high level of deprivation existing in the area, along with extensive crop damage, malnourishment, inadequate income levels and insufficient outreach of relief measures, the possibility of deaths having occurred owing to prolonged malnutrition and hunger, compounded by diseases, could not be ruled out. Indeed, out of 21 deaths investigated by the team in the districts of Naupada, Kalahandi & Bolangir, 17 were attributable to such causes. The State Government differed on this matter, asserting that the report of the Commission's team did not "bring out clearly any case of death due to starvation." Instead, the State Government stated that instructions had been given to all Collectors to form squads of officials to visit each district each week to enquire into the condition of those who may be ill or weak and to intervene urgently on their behalf. It was added that the Government was supporting a number of supplementary nutrition programmes to ensure that those who were vulnerable for reasons of age or infirmity were fed for 24 days each month. The Union Ministry referred to the history of drought in

western parts of Orissa and the special programmes implemented by the Government of India and the State Government to ameliorate the acute poverty in the area. It was stated that the Government of India had released Rs. 54 crores from the National Fund for Calamity Relief (NFCR) to help the State Government, including Rs.4 crore exclusively for the Emergency Feeding Programmes. This was in addition to the normal allocation of Rs. 36.76 crore during 1996-97 in the Calamity Relief Fund (CRF) of the State. Since the Government of India was not directly involved with the execution of relief measures, it was added that it would be difficult for it to comment on the reported deaths by starvation.

(ii) The Commission's team observed that the Old Age / Widow / Disability Schemes run by the State Government were not covering all the deserving cases. The State Government responded that the number of beneficiaries covered by the schemes had been increased from 8, 11, 980 in November 1996 to 8, 73, 400 in February 1997 and that the Collectors concerned had been authorized to provide gratuitous relief cards to those who, in their judgement, were in need of emergency succour. The Government of India observed that the State Government had taken the necessary action to enhance the coverage of relevant schemes on the basis of the suggestions of the Commission's team.

(iii) The Commission's team had recommended that the State Government may wish to consider setting up an institutional mechanism at the grass-root level to oversee the relief measures and to add transparency to the administration's programmes. It also felt that there was need to evaluate the functioning of existing District Level Committees. Pending such action, the team observed that mobile squads should be formed, comprising officers of known integrity, to undertake

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It is relevant here to note, however, that the state Government's report give its views on only 6 of the 24 cases investigated by the commission's team.

surprise field visits in order to ensure the effective implementation of relief measures. The State Government commented that NGOs were already being associated regularly with the work of Disaster Management Committees and that, following panchayat elections, there was need to fully involve panchayati raj institutions in overseeing relief measures. For its part, the Government of India noted that the observations of the Commission's team came in the wake of complaints of non-availability of food grains, leakages in the public distribution system and the inadequacy of labour intensive schems. The Government of India therefore drew attention to the need to make institutional mechanisms work properly, such as the Disaster Management Committees at the State, district and village levels.

(iv) The Commission's team noted the inadequacy of water, both for drinking porposes and more generally, this had resulted in great hardship to the affected population, and even to a shortage of fodder for cattle—the latter circumstance leading to distress sales of livestock. The State Government responded that Rs. 3.67 crore had been released from the Calamity Relief Fund/National Calamity Relief Fund for augmenting drinking water in urban areas, 300 tube wells having been sunk against 328 programmed. In addition, under the State Plan and ARWSP, it was stated that, in rural area, the Department concerned was to sink 8200 tube wells, 2000 public tube wells in place of defunct tube wells, and 2447 Anganwadi tube wells. It was added that, against these targets 5703 tube wells and 346 surface wells had been sunk, and 1140 public tube wells and 616 Anganwadi tube wells had been replaced. It was further stated that the Lutheran World Service (India) was sinking 500 tube wells in the 'KBK districts' and that Rs. 2 crore had been released for shallow ponds, surface wells, bunds etc, detailed instructions having been given to Collectors.

(v) A large number of vacant posts for medical staff, particularly in the rural areas of the 'KBK districts', was

noted by the Commission's team, which suggested that there was need to redeploy staff and resources to the areas affected by drought. The State Government responded that it had made arrangements to post doctors to the area through adhoc appointments and changes in staff rules and that it had allocated Rs. 55 lakhs from the CRF to purchase and supply medicines to Primary Health Centres. Further, revenue inspectors, village level workers and gram panchayat functionaries had been asked to visit the affected villages extensively and to report to the Collectors concerned. A sum of Rs. 4 crore had also been allocated from the NFCR for medicines in the drought affected areas. The Government of India took the view that steps had been set in motion to improve the helth conditions, in accordance with the observations of the Commission's team.

(vi) The Commission's team observed that large-scale migration was having a negative impact in terms of slowing down the asset-building relief measures, and also adversely affecting the provision of relief measures. The State Government commented that migration by landless, marginal and small farmers was an annual event after the harvesting of the Kharif crop; It was added that such migration resulted from the "pull" of higher wages elsewhere and that the State Directorate of Labour intervened regularly to ensure the improvement of working conditions. The Government of India, while observing that some migration took place even in normal years from among those who sought better employment opportunities and wages, noted additionally that in drought situations there were abnormal rates of unemployment among agricultural workers. It stated that, to deal with such situations, adequate funds were made available under CRF, NFCR and a variety of wage/employment programmes.

(vii) Finally, the Commission's team observed that the 'right level' of sensitivity and awareness were needed to report on conditions of distress in rural areas and to recommend effective relief measures. The team had heard

allegations from the local population and elected represnntatives of the systematic neglect of backward areas and even of partisanship in the sanctioning of relief. Such comments reflected a sense of anger and alienation amongst the people of the area. The State Government responded that relief measures were 'post-event intervention' and, at best, could be ameliorative in nature. Long-Term drought proofing measures were required in order to increase the area under assured irrigation. Further, there was need for the harvesting of surplus run-off during the monsoon in order to provide supplementary irrigation, and also for crop substitution (oil seeds, pulses in place of paddy), and watershed treatment that would provide wage employment through the afforestation of the higher reaches, gully control in the middle reaches and a water-harvesting structure in the lower reaches. It was added that the State Government had prepared a Long-Term Action Plan (LTAP) for the 'KBK districts', covering the period 1995-96 to 2001-02, and that this Action Plan, which had been approved by the Government of India, envisaged a larger flow of funds from the Centre than had hitherto been possible. The State Government indicated that it would welcome the Commission's intervention in securing this larger flow of funds for the Long-Term Action Plan. The Government of India, for its part, stated that a large number of poverty alleviation and wage employment programmes were in operation in Orissa, such as the Integrated Rural Development Programme (IRDP), the Development of Women and Children in Rural Areas (DWCRA), the Jawahar Rozgar Yojana (JRY), the Million Wells Scheme and the Employment Assurance Scheme, the National Old Age Pension Scheme, the National Family Benefit Scheme, the National Maternity Benefit Scheme, and the Rural Water Supply and Sanitation Programme. It added that the Long-Term Action Plan (LTAP) was also being implemented for the 'KBK districts.'

4. From the above it will be seen that while there was a large measure of agreement on the areas of work in which

special efforts had to be made to end the cycle of deprivation and malnutrition in the 'KBK districts'—even if not on whether deaths had in fact occurred as a result of starvation· there was a clear need to set down, in a non-contentious and constructive manner, a practical programme of interim measures that would be clearly defined and agreed upon by all of the principal players, a programme that would be readily understood and transparent, and for the implementation of which accountability and regular monitoring would be the sine qua non. It would also appear from the above that, despite all of the existing efforts and plans, it remained uncertain as to whether the "bundle of commodities" meluding food, which Professor Sen considered essential to ensuring that deaths did not occur as a result of starvation, was indeed available to all of the people of the 'KBK districts,' especially the most vulnerable.

5. In the 11 hearings that were therefore held by the Commission, following the submission of the petition to it by the Indian Council for Legal Aid and Advice & Others, practical programme of interim measures was evolved and agreed upon by all of the parties concerned, in a co-operative effort that involved the petitioner, the State Government and the Central Government, working together under the guidance and auspices of the Commission.

6. After due consideration, the Commission also arrived at the view that the interim measures should be undertaken over a period of two years, subject to such periodic reviews as it may consider appropriate and necessary, and that these interim measures should be as follows .

A. Monitoring Arrangements :

The key to effective implementation of programes, however well-conceived, is their proper monitoring, which should enhance efficiency, transparency and accountability. The Commission believes that responsibility for such implementation and monitoringmust, most appropriately and essentially,

be that of the State Government, working through its normal lines of command and control, which must in turn draw fully upon the talents of the officers of the State, panchayati raj institutions and such leaders of civil society, including non-governmental organisations, as are in a position to assist with sincerity and integrity. The Commission believes that it is for the State Government to establish the details of such a system of implementation and monitoring for the 'KBK districts', from the State-level, to that of the district-level and below. This being said, the Commission recommends that, at the State-level, a Monitoring Committee be established under the authority of the Chief Secretary, to guide and supervise the over-all effort. In addition, and without in any way wishing to transgress the normal lines of command and control, the Commission intends to appoint an eminent person to serve as its Special Rapporteur for the 'KBK districts' in order to keep itself fully informed of developments in respect of these districts and to interact, on its behalf, with all concerned authorities, whether at the State, district or other levels as it may deem to be appropriate and necessary. The name of this Special Rapporteur, in regard to whom the parties have been consulted, will be announced shortly. Costs in respect of the Special Rapporteur will be borne under arrangements to be made by the Commission, it being expected, however, that the State Government will render all possible practical help and co-operation to him in the discharge of his responsibilities.

B. Specificity of Programmes :

(i) The Commission has been keen to ensure that the interim measures that are put into effect should be as clearly specified as possible in terms of location, time-frames and quantitative targets. Thus, while the interim measures will be in effect for a period of two years, subject to review, the Commission has after careful discussion with all concerned-received from the State Government a specific set

of commitments district-wise and programme-wise, for the period 1. 12. 1997 to 31. 4. 1998, in respect of each of the 8 districts belonging to the 'KBK' group' kindly see, in this connection, the letter of 15 January 1998 from the Commissioner-cum-Secretary, Government of Orissa, to which are attached detailed tables of the targets for the 'KBK districts', for the five months 1. 12. 1997 to 31. 4. 1998, in respect of the programmes relating to Rural Drinking Water Supply, Social Security, Soil Conservation and primary Health Care **(Annexure-VI)**. It has further been agreed in hearings before the Commission that the State Government will provide to the Commission an appraisal in respect of these programmes towards the end of March 1998 and that, by 31 March 1998, it will also submit to the Commission a similar, location specific and time-bound plan for the three succeeding months, namely, May, June and July 1998. This procedure will be repeated for each succeeding quarter : the appraisal of the preceding quarter and the plan for the succeeding three-months being placed before the Commission a month before the latter commences. In making its assessments of the progress achieved and directions to be given, the Commission will draw upon the advice of its Special Rapporteur.

(ii) Certain comments follow in respect of individual programmes.

C, Emergency Feeding Programme :

This was being provided, as a nutritional supplement, to some 74,545 persons, on a once-a-day basis for 25 days a month. After reviewing the suggestions and views on this programme, the Commission is of the opinion that :

(i) The Emergency Feeding Programme, as devised, should continue on a once-a-day basis. However, the programme should be available each day of the month.

(ii) If any needy persons have been inadvertently omitted from the programme, they can be added to those being fed, on the advice of the concerned gram sabha/gram panchayat, the competent State authorities or the Special Rapporteur of the Commission.

(iii) As the present contents of the feeding programme should, according to all reports, be improved upon both in terms of the types of food offered and the calorific value of the food, the Commission recommends that the Monitoring Committee examine this matter carefully, drawing upon the best available advice of competent nutritionists and other experts in such matters, and make the necessary improvements.

(iv) The food is at present prepared by Anganwadi workers and this should continue. To the extent that additional personnel are needed to help, they should be drawn from the local population, so that employment is generated under the appropriate schemes e.g., the Jawahar Rozgar Yojana (JRY).

(v) The State Government has requested the Commission to give directions to the Central Government to release the funds due from the latter for the continuation of the Emergency Feeding Programme up to 30 April 1998. When considering a similar request on 22 October 1997, the Commission asked the learned Counsel of the Union of India to impress upon the Government of India the Commission's view on the necessity of continuing the scheme until find recommendations were made. The Commission would now like to re-iterate, as it did in its order of 22 October 1997, that the feeding scheme should continue and that the pattern of funding shall be as it was before September 1997. Further, as also stated on 22 October 1997, since the feeding centres are expected to continue until further orders, the Commission trusts that, for the purpose of running such centres, the

State Government will also continue to be able to secure rice at the rate applicable to supplies for persons living below the poverty line.

D. Old Age Pensions, Disability Pensions & Other Social Security measures :

(i) The Commission is of the view that all those who qualify for old age pensions, disability pensions and other social security measures under the existing criteria governing such schemes, should be included among the beneficiaries. It was agreed in the hearings that these criteria would not be sought to be modified for purposes of the present exercise. The State Government has, however, through its letter of 5 February 1998 addressed to the Commission by its learned Counsel, indicated that the number of those who would qualify for assistance under the existing criteria of the National Old Age Pension Scheme, would be 47, 959 persons more than the 56,579 beneficiaries so covered at present under that scheme for the 'KBK districts.' The Commission recommends that the proposal of the State Commission in regard to this additional number of beneficiaries, which has already been submitted by it to the Central Government, should be acted upon expeditiously, in light of the Commission's observation made above.

(ii) As there have reportedly been delays in the monthly disbursement of pensions and such benefits, the Commission trusts that the monitoring system established by the State Government will ensure that such delays do not recur. The system of distributing identity cards to beneficiaries should also be expedited, as one means of off-setting such delays.

E. Employment Generation in Agriculture, Ecological Security. Soil Conservation. Irrigation and other schemes :

(i) Without, at this stage, going into questions relating to the implementation of the Long-Term Action Plan for the

'KBK districts', the Commission has noted the specific undertakings contained in **Annexure-VI**, not least insofare as they relate to employment generating activities. Here again, learning from past experience, the Commission urges the tightening of monitoring systems along the lines set-out earlier in this Proceeding.

(ii) Further, in the light of the programmes being implemented, it appears to the Commission that the benefits of many of these could be maximized by linking them more consciously to employment generating projects. By way of illustration, the water-supply scheme (including the repair and maintenanc of handpumps), the distribution of medicines in the Public Health Schemes, soil conservation and irrigation works, all lend themselves to such a purpose, as would affortestation programmes, which could be included in the effort, together with the revival of water-conservation installations of an earlier period which have fallen into disrapair.

(iii) Here again, the Commission has been informed of delays in regard to payments to those engaged in employment generating programmes. The Commission trusts that this too will be set right by the Monitoring Committee of the State Government, for it negates the whole purpose of the endeavour if delays in payment are allowed to compound the suffering of those who are dependent on such programmes.

F. Drinking Water :

The quantitative plans of the State Government are fully spelt out in their various submission. to the commisson Further, the precise plans for the five-months ending 30 April 1998 are contained in **Annexure-VI.** The Commission sees no need therefore to comment on these plans any further at this stage, except to note that, in the hearings before it, mention has repeatedly been made to the need to maintain and keep in good repair the tube wells and handpumps that already exist

but that are often in unusable condition. The Commission trusts that the Monitoring Committee will give this matter its attention as well, and will endeavour, not least through the training of local personnel and an improvement in logistical facilities, to remedy the situation.

G. Public Health :

(i) Here too, the quantitative plans have been submitted to the Commission and require no specific comment at this stage. The Commission has taken note of these, and of the new regulations that the State Government is enforcing to ensure the posting of medical staff to rural areas. The Commission would like to observe, however, that it is deeply concerned at the deleterious, indeed devastating effects of malutrition on young women and mothers, that is taking a cruel toll on them and that is leading, in addition, to an unacceptably high incidence of low-birth weight amongst the children being born, a deficiency that in turn prevents the full development of their human potential. The Commission strongly recommends that the Monitoring Committee take maximum steps to ensure that measures are taken in the 'KBK districts' to provide the iron and iodine supplements and the vitamin A that is required by young women to prevent such needless harm from occurring.

(ii) Further, given the perilous nutritional conditions prevailing in the 'KBK districts', the Commission recommends that a health-cum-nutritional survey be undertaken for these districts by an independent agency, such as the Nutrition Foundation of India.

H. Land Reform :

(i) The matter of land reform falls within the context of long-term measures needed for the 'KBK districts' and, at this stage, the Commission is not entering into the details of those measures or of the implementation of the Long-Term Action Plan.

(ii) It has, however, been pointed out to the Commission in the hearings that the issue of land reforms is inextricably linked to the future well-being, or decline, of these districts. It has accordingly been urged that the State Government should, even at this stage, be requested to constitute a Committee to examine all aspects of the land reform question in the 'KBK districts'. The Commission sees value in this suggestion and urges the State Government to constitute such a Committee with the request that it to give its report within a fixed time-frame, on the measures that should be taken in these districts to remedy the present situation that is marked by a lack of land reforms, the alienation of land, migration and numerous other concomitant ills.

I. Other Observations :

(i) The State Government has expressed its concern that, with the elections to the Lok Sabha having been announced and now underway, the implementation of these interim measures should not be affected by the restriction imposed by the Model Code of Conduct. This Commission would like to make clear that the measures envisaged have been evolved, and their implementation commenced, well prior to the announcement of the eclections. Accordingly, it expects that the implementation of these measures will proceed unhindered by any such restrictions.

(ii) It remains of course open to the petitioner, and to the other parties, to approach the Commission on any additional matters which they may wish to bring to the attention of the Commission for further directives.

7. Finally, the Commission wishes to place on record its deep appreeiation of the most able and constructive cooperation that it has received throughout its consideration of this matter from the learned Counsels appearing before it Shri Sanjay Parikh for the petitioner, Shri Jayant Das and Shri Raj

Kumar Mehta for the State Government of Orissa, and Shri Ajay Kumar Vali and Shri Avtar Sing Rawat for the Union of India. The Commission is also indebted to Dr. Amrita Rangasami, Director, Centre for the Study of Administration of Relief for her most thoughtful presentations and submissions. At every stage of the proceedings, the Commission has also received the fullest co-operation of the senior officers of the State and Central Governments, whose presence it has requested. Their collaborative effort has enabled the Commission to set-out the interim measures recounted above through a process that has been notably non-adversarial and cooperative in its approach and outcome. As indicated earlier, the Commission will revert to the longer-term issues raised in respect of the 'KBK districts' separately and at a later stage.

8. A copy of these Proceedings may be forwarded to the Registrar of the Supreme Court of India for being placed in the records of the file of the Writ Petition (Civil) No. 42/97 pursuant to Orders therein dated 28 April 1997 and 26 July 1997. The Commission directs that these recommendations be implemented by the State of Orissa and the Union of India forthwith. The Commission would further clarify that the recommendations made by it pursuant to the Orders of the Hon'ble Supreme Court of India would be subject to such other or further directions as the Hon'ble Supreme Court may be pleased to issue in the matter.

Justice M.N. Venkatachaliah,
Chairperson

Shri Virendra Dayal,
Member

Justice V.S. Malimath,
Member

Proceedings of the National Human Rights Commission. Dated 17-02-1998

AFFIDAVIT FILED BY RABI DASH

BEFORE THE HON'BLE CHAIRMAN
THE NATIONAL HUMAN RIGHTS COMMISSION
SARDAR PATEL BHAWAN
NEW DELHI

Reference case No. 2 of 1997—
Writ petition (Civil) No. 42197 (Supreme Court)

Sub : A report on Orissa Gavernment's apathy towards rural poor in Nuapada and Kalahandi districts leading to unnatural deaths, mis-utilisation of relief fund and non-utilisation of Central funds earmarked for poverty elimination programmes.

Hon'ble Sir,

As per your direction at your court in New Delhi on January 6, 1998, I am stating the following facts regarding the misery and untold sufferings by a vast section of people living in Kalahandi, Nuapada and Bolangir districts in Orissa.

That the Central and State Governments have been callous in discharging their constitutional responsibilities in protecting the lives of lakhs of people in the above mentioned three districts.

Kalahandi has been in the news for sometime now for starvation deaths, child sale and heavy migration. Though successive governments have conveniently dismissed the deaths as natural deaths, the Orissa High Court in 1992 confirmed at least five deaths and ordered the State Government to pay compensation to the nearest family members of the diseased people.

The Hon'ble High court also desired that the State Government implement certain measures as recommended by

the Court appointed inquiry committee. But unfortunately even after five years of the verdict, the State Government has done precious little to save the dying people of these districts thus inviting the contempt of court proceedings.

The situation, in the meanwhile, is getting out of control with most primery health centres functioning without doctors. In Nuapada district, some 43 out of 58 doctors have not reported to duty for the last three years. Similarly, 62 posts for doctors are lying vacant in Kalahandi.

Malaria has taken an epidemic form in the region and hundreds have died uncared and unattended thanks to callous authorities. Even to day, the vellagers are silently suffering from other dreaded diseases like tuberculosis, sickle cells, anthrox and other malnutration related diseases besides malaria.

A survey conducted by Kalanahdi Vikash Parishad in Komna, Boden and Thuamul Rampur blocks in Nuapada and Kalahandi districts has painted an alarming picture about the widespread suffering by the people. One out of every three persons is undergoing through malaria which itself is a world record.

More than 30 percent of 12 tribal and backward communities are suffering from Sickle Cells, threatening extinction of those tribes. Still worse is the fact that tribals are dying of anthrox which was confirmed by the Director, Communicable Diseases, New Delhi.

It is truism to say that the pangs of hunger have been forcing the tribals to eat rotten beef and meat for their survival. Such incidence only confirm the helplessness of the sizable section of people in the region and exposes the total breakdown in the food supply and health administration.

Last year, the region suffered from yet another serious drought. But the state government violated the Relief Code

by diverting about Rs. 50 crores under the Natural Calamity Relief Fund for road construction, electrification and others, which primarily benefited contractors, government officials, politicians and middlemen.

Further more, in the financial year. 1996-97 sufficient money was allotted in state budget for EAS, JRY, Million wells scheme, Indira Awas Yojna etc. Ironically, the State government did not bother to utilise such funds earmarked for the purpose and refunded Rs. 117·00 cores as it could not spend during 1996-97.

The first task before the government was to ensure food supply and medical help to the needy ones. Instead, the State Government diverted the money to Grid Corporation of Orissa Ltd, Water Resources Deptt, Rural development Department and other Departments.

Your Lordship will agree that a person in his death bed due to prolonged starvation cannot be expected to undertake any physical labour, much less the earth work. Relief means immediate help to the victims in the shape of food, medicine, drinking water and building materials So that precious lives are saved. The State Government, however, has not bothered to save the lives of the victims of drought prone districts by coming to their immediate aid.

The region has one of the highest infant mortality rates in the world. For every 100 life birth, 131 children die in Kalahandi and Nuapada district. This was also confirmed by top district level officials, who, however do not want to reveal their identities.

The emergency feeding programme by the State Authority is just an eyewash as the starving people are not getting sufficinet food being prepared by Anganwadi due to corrupt practices. The people have no access to the rice and other food materials.

The irory is that the region sits over vast stretches of underground water according to surveys by several government organisations. Yet 95 per cent of the water deficient

villages identified by the government have no tube wells and other sources of drinking water forcing the people to use the polluted water flowing through Nalas.

Thousands have since migrated to other States due to lack of employment opportunities. Even the assured employment programme could not ensure single manday employment to the needy ones for which the wage earners and small farmers have been forced to outmigrate in large number.

PRAYER

In the facts and circumstances narrated above, it is humbly prayed that the Hon'ble Commission may be pleased to direct the State Government to provide immediate relief to the rural poor still struggling to eke out a living in the above mentioned districts.

And the State Government be directed to take immediate step to combat Malaria, TB, Sickle Cell, Anthrox and other malnutrition related diseases which have taken an epidemic form.

And further be pleased to take appropriate action against the Orissa Government for its failure to utilise funds earmarked for the relief purpose,

For this kindness, I shall remain ever grateful.

Rabi Das

15-2-1998 By The Applicant

AFFIDAVIT

I, Sri Rabi Das, aged about 58 years son of late Lokanath Das, resident of Vill / P.O. Tarpur, District, Jagatsinghpur, Orissa at present residing at Sunbahali P.0. Argen Via. Komna District-Nuapada, Orissa do hereby solemnly affirm and state as follows :

1. That I am the Secretary of Sarvodaya Relief Committee, Orissa, Thoriasahi, town and District, Cuttack.
2. That the facts stated above are true to my knowledge and belief.

Rabi Das

15-2-98 Deponent.

ADDITIONAL APPLICATION FILED BY RABI DASH

HON' BLE JUSTICE M. N. VENKATACHALIAH
CHAIRPERSON
NATIONAL HUMAN RIGHTS COMMISSION
SARDAR PATEL BHAVAN
NEW DELHI

2nd April, 1998

REF : Case No. 2 of 1997
Writ petition (Civil) No. 42 / 97
Indian Council of Legal Aid & Advice,
Rabi Dash and others
vrs.
State of Orissa and others.

Dear Sir,

In continuation of my affidavit filed before the Commission on 15-02-98, I am to inform you that the Orissa Government has diverted part of the fund earmarked for calamity in the year 1996-97 for other purposes thereby denying the drought victims minimum relief. This has compounded the misery and untold sufferings by a vast section of people living in Kalahandi, Nuapada, Bolangir and Sonepur districts.

Realising the gravity of the drought situation in the Nuapada, Kalahandi & Bolangir districts in 1996-97, the Governmet of India had released Rs. 54 crores from the National Fund for calamity Relief (NFCR) exclusively for drought relief measures. This is over and above the normal allocation of Rs. 36·76 crores during the year in the Calamity Relief Fund of the State.

I beg to state that most of the funds from NFCR were diverted for purposes other than drought relief measures as evident from the **Annexure-1**. So also is the case of CRF.

What is significant is that the Government has diverted the funds on grants to Orissa Lift Irrigation Corporation Ltd. and Grid Corporation of Orissa Limited, the Departments of Housing and Urban Development, Water Resources and Rural Development. Even the State Government unabashedly has given a grant of Rs. 30 lakhs to Berhampur University while under the normal circumstances, such funds should have been pumped in from the State Budget.

A classic exemple of pilferage of funds is the State Government's claim that it had spent Rs. 1.85 crores for apparent cost of search and rescue measures during the year. It is an irony that the Government could spend a measly Rs. 3·1 crore in the worst drought hit districts of Kalahandi, Nuapada, Bolangir and Sonepur on the account of employment generation.

Your Lordship would be surprised to find that an amount of Rs. 77·11 lakhs was granted as assistance for damaged boats and nets with a view to help prosper the commercial activities of already rich Baghda Prawn catchers in the Bay of Bengal of coastal Orissa. This assistance is in no way concerned with the relief activities in the distressed pockets of drought affected region of Kalahandi, Bolangir, Nuapada districts and the like.

Still worse is the fact that the Government did not spare a single pie on the starving weavers in these districts which forced nearly 70% of the weavers to migrate to Raipur, Burla, Bhilai, Durg, Jharsuguda and other parts of the country. The conditions of other artisans are equally deplorable as the Government thought it fit to leave them to fond for themselves inspite of our several pleas with the authority.

The Commission will appreciate the fact that the State Government had spent more money to activate 4321 existing. Lift Irrigation points in Cuttack and Balasore districts in Coastal Orissa while in the four districts of Western Orissa, a meager 821 existing lift irrigation points were activated

Annexure-2. This speaks volumes about the bias of the present Government towards Coastal Orissa thanks to the intervention of Sri Basant Kumar Biswal, the power ful Minister for Water Resources and Finance.

My experience with the Government's relief measure works in Western Orissa is one of utter disappointment and despair as the Government never has taken the recurrent drought in this part of the State seriously. Even in a drought year of 1996-97 the Government has spent less than it spends in a normal year for development activities.

It is in this background, I take this privilege to appeal you to ask for detailed records of expenditure on drought relief measures and examine the manner in which the State Government has been spending money from NFCR and CRF.

The Commission may also kindly formulate a guideline under which both the State and Central Government will spend the calamity related funds so that the helpless farmers, artisans and other victims will get the benefits meant for them. This will inevitable put a stop to whimisical spending of the funds earmarked for relief measures.

I also pray Your Lordship to direct the State Government to pay compensation to the family members of the persons in the drought affected region found dead owing to hunger, starvation, malnutration and the related diseases as confirmed by the team deputed by the Commission since the remaining family members are in total distress.

A precedent has already been established by the Orissa High Court on February 12, 1992 when it directed the State to pay a compensation to the nearest kin of five persons who died of starvation.

For your kind and favourable orders in the larger interests of the masses, I shall ever remain obliged.

Thanking you, Warm regards.

Faithfully yours
Rabi Das

REPORT OF THE VISIT OF THE OFFICIAL TEAM OF THE NATIONAL HUMAN RIGHTS COMMISSION TO THE SCARCITY AFFECTED AREAS OF ORISSA

The National Human Rights Commission considered a letter from Shri Chaturanan Mishra, Union Minister for Agriculture, on 3 / 4 December, 1996, on reports of starvation deaths in some areas of Orissa. The referred letter to his visit to Balangir when some of the local MLAs, and representatives of other political parties complained about starvation deaths. The letter also enclosed a list of 26 cases sent by the District Administration which showed that the deaths had taken place due to causes other than starvation. The Minister requested that the Commission may go into the details and undertake an investigation so that the real picture might emerge.

2. The Commissson observed that though the report appended to the Union Ariculture Minister's letter indicated that some deaths had taken place becuse of illness or other natural causes and not because of starvation, in view of several reports in the Press suggesting to the contrary the matter needed examination. Accordingly, the Commission decided that in the first instance, a Team of officers consisting of the Secretary General and the Director General (Investigation) may proceed to the place at its earliest convenience for the collection of facts. The Commission further directed that notice be issued to Chief Secretary, Government of Orissa for a report within four weeks.

3. Shortly before the departure of the Team to Orissa, the Chairperson received by fax a Joint Memorandum signed by seven members of the State Legislative Assembly. The Memorandum also listed 14 cases of alleged starvation deaths. The list attached to the Memorandum is at Annexure—1. The

Members of the State Assembly requested that the Commission may intervene and investigate all allegations of starvation deaths reported from some areas of the state.

4. In pursuance of the decision of the Commission the Secretary General and the Director General (Investigation) left Delhi on 11 December, 1996, visited the districts of Nuapada, Kalahandi and Bolangir on 12, 13 and 14 December, 1996. The Senior Superintendent of Police from the Investigation Division of the Commission and another officer who had accompanied the Team stayed back till 17 December to complete certain parts of the enquiry. The Team had the benefit of the presence of the Special Relief Commissioner, Principal Secretary (Revenue), Special Secretary (Home), Joint Director (Health Services), and the Collectors of the district concerned, during its visit to some of the villages in these three districts.

5, During its visit, the Team had the opportunity of interaction with public leaders, media persons, villagers and members of families which reportedly faced starvation deaths. It had also interaction with five members of the State Legislative Assembly. Some of the MLAs accompanied the Team during its visit to the villages.

6. During the visit of the Team, the Special Relief Commissioner made available to it, inter alia, a list of 50 deaths which had taken place in Bolangir and five in Kalahandi; allegedly becaure of starvation in recent months. The list pertaining to Bolangir contained the 26 names listed in the Annexure to Union Agriculture Minister's letter. These as well as the fourteen deaths which Members of the Legislative Assembly had listed in their Memorandum, had taken place a month or more before the time of visit of the team (except two deaths in respect of which no specific date was mentioned). During the visit of the Team, it enquired into the cases of 3 deaths in Nuapada District, 13 deaths in Bolangir and 5 deaths in Kalahandi district. The Team's method of verification of these deaths was to—

(i) visit the house of the affected families and talk to the family members as well as neighbours and other village functicnaries ;

(ii) ascertain

(a) The extent of crop damage and availabilitv of foodgrains :

(b) utlisation of ration cards for drawal from the PDS.

(c) level of wage employment in the family :

(d) impact of relief measures, such as Emergency Feeding scheme, Old / Widow Pensions : and,

(iii) cross check about the information on death with Government records. In some cases, such cross-verification with Government records was not possible as the Health authorities did not have the record of all cases of death taking place in the villages.

7. The three districts the Team visited have a long history of scarcity conditions. This history is reflected in the physical characteristics of the people in the rural areas, a large number of whom appear malnourished and not having enough to enable them to even have one square meal a day. Scarcity conditions have forced the able bodied members of many of the families to migrate to other places in the State or outside the State. In a large number of these cases, such migrations have resulted in the loss of even the limited earning capacity of the family as there has been little or no contact after migration and no support to sustain those left behind. The earning capacity having been thus depleted, those who remained back—mostly people in their old-age or who are infirm—have been the worst sufferers of destitution and malnourishment. There has been the case of Dhambudha Majhi

of village Mohulkot, Nuapada District, who according to the district authorities died due to natural causes but according to the villagers was unable to find enough to eat as his son had migrated outside, and consequently died of starvation. There is another case of Dhaneshwar Majhi of Nuapada, who was working as a labourer in Raipur but had died on his way home at Khriar Road on 11 Oct 1996. The post-Mortem showed that he died due to some lungs ailment whereas other details in the post-Mortem report shown to the Team indicate that nothing was found in his stomach. Another incident that could be cited is that of one Panu Naik of Saurapadar village, Kalahandi District who died on 8 Nov, 1996 leaving behind his wife and two small children. According to district authorities death had taken place due to fever. The villagers who were present at the time of the Team's-visit, however, asserted that the deceased had become very weak due to mal-nutrition which altimately caused his death. Sukru Bhoi of Chhotamakhua village, Bolangir District died on 8 October 96. His son can work as a labourer but no relief work has been provided. Widow of the deceased is on a mid-day meal programme. Jayadev Barik of village Bhutiarbahal, Bolangir District died on 25 October 96. Even though it was alleged that it was a case of starvation death, during the visit of the officers accompanying the Team, a substantial segment of the village populace : stated that it was a case of natural death. Sahadev Suna of village Saplaher, Kalahandi District died on 18 October 96. Officers accompanying the Team visited the village and were informed that he was among the well to do in the village. They found that his house was well built and that the family had good stock of food grains as his field did not suffer crop damage. The case could not be treated as one of starvation death.

8. The above cases have been cited with a view to emphasising the difficulties faced by the Team in making an assessment as to whether a particular death was caused exclusively by starvation or not and also the circumstantial factors

which it had to rely on. Based on the methodology as indicated in para. (6) above, the Team has come to the conclusion that because of the very high level of deprivation that is prevailing in the area, extensive crop damages, malnourishment and the inadequate income levels, and an insufficient out reach of relief measures, the possibility of some of the deaths having taken place due to prolonged mal-nutrition and hunger compounded by disease cannot be ruled out. The list of cases of death enquired into by the Team is at Annexure-II. It covers many of the cases referred to the Commission by different sources.

9. The area the Team visited is drought-prone and poverty stricken. Deficient rains and crop failures have compounded the problem. According to the people with whom the Team interacted the drought situation faced by the area during the current year is unprecedented.

10. In the light of its own observations and interaction with the people, as well as government officials, the Team feels that famine conditions are likely to get accentuated in the area affected by drought in the coming months unless ameliorative steps are intensified immediately.

11. The State Government has brought out a White Paper on Drought Situation in Orissa and has indicated a number of steps for mitigating the sufferings of the people. These are broadly the following :—

(i) Authorisation to Collectors to organise Emergency Feeding Programme for the old, indigent and the infirm who are not otherwise eligible for coverage under various social security schemes like old-age/widow/disability pensions.

(ii) Increased allocation of foodgrains to meet shortage and increasing their availability in the open market.

(iii) Implementation of labour intensive programmes with a view to mitigating large-scale unemployment and consequent lack of income. "Government is committed to ensuring that no able-bodied person who is willing to work has to go without work and a means of earning a meal a day".

(iv) Intensification of efforts to provide potable water through the boring of deep tubewells; and

(v) Contigency plan by the Health Department to deal with a higher incidence of disease.

12. During its visit to the three districts, the Team came across a number of old, who are destitutes and uncared for. Quite a few of them were not in receipt of old age/widow/ disability pensions. In a few cases the Team was told that even after sanction, persons concerned were not in receipt of pension. The District authorities had admitted those also not covered by the Emergency Feeding Programmes. In a few cases seen by the Team during its visit provision of immediate help was felt necessary and the Collector who was accompanying the Team ordered hospitalization. The district authorities brought to the notice of the Team a ceiling limit that existed in regard to the sanction of old age/widow pensions. In one case, the Team was informed by the Village Level Worker that he did not recommend the case of a widow's pension as the number allowed had already been reached. **Considering the special circumstances prevailing in the drought affected areas, the Team would recommend extension of the Scheme to cover all such deserving cases.**

13. Pending sanction of pensions, the district authorities could expand coverage of the Emergency Feeding Programme. In fact, the Special Relief Commissioner (SRC) informed the Team of the instruction he has issued on 27 November 1996 to the Collectors asking them to form a squad

consisting of the Revenue Inspector, the Village Level Worker and the Secretary of the Gram Panchayat which should visit every village under their jurisdiction at least once a week and identify those old/ill or too weak to work, who have no social security cover and need urgent medical or nutritional intervention. Such people are to be given food grain packets for a certain number of days on the scale sanctioned by the Government. This will go a long way in ensuring that the needy ones do not go unattended. Differing views were, however, expressed on the manner in which food was to be made available to those who needed them. One view was that emergency feeding of the old and the destitute could be combined with the Mid-Day Meal Programme in schools. The problem that would arise in such an arrangement is about feeding on holidays. There were also muted voices of social non-acceptability of eating from a community kitchen ! A contrary view expressed was that dry ration could be provided in such cases. Quite a few of the destitutes needing an emergency feeding arrangement were found to be physically unfit to undertake cooking. The Team would suggest that an appropriate arrangement be made to meet the situation obtaining in each village. Participation by Non Governmental Organisations in this area would be encouraged. The Team is of the view that the old, infirm, and destitute constitute a very vulnerable group and require special and urgent attention in order to avoid higher incidence of death among them in the coming days.

14. At a few places visited by the Team in Bolangir District, complaints were made about the non-availability of foodgrains and the leakages in the Public Distribution System. One comment was that PDS became very active shortly before the arrival of the Team ! In one village the Team was informed that ration cards were distributed just a day prior to its visit. There were also complaints that the grain component of the Food for Work Programme was not given or that full wages were not paid in some cases. There were

also complaints of the inadequacy of the quantum of labour intensive work and people having to go to the neighbouring villages for such work and where they found themselves unwelcome. While officers at the higher levels display sensitivity and commitment, complaints such as these are to be considered as a reflection of the manner of functioning of the official machinery at the cutting edge level. It was, perhaps, in this context that at the wrap-up meeting at Bolangir, a demand was made that the relief measures should be overseen by an all-party Committee. The State Government may like to consider the suggestion and set up an institutional mechanism at the grass-root level which oversees the relief measures and which will help to make the work of the Administration more transparent. Pending the introduction of such an institutional arrangement, the Team feels that mobile squad comprising of officers of unblemished integrity be set up to undertake surprise field checks and to ensure effective implementation of relief measures,

15. It may be mentioned in this connection that the Supreme Court, in a Public Interest Litigation petition filed before it in 1985 and a writ petition field in 1987 on the issue of starvation deaths in some parts of Orissa (Kishen Pattnayak, Vs State of Orissa. Indian People's Front through its Chairman, Nagbhushan Patnaik Vs State of Orissa & Ors.) directed the State Government in January 1989, to nominate 5 persons belonging to recognised voluntary organisations as members of District Level Natural Calamities Committee set up at the District Level with the Collector, other officials and public representatives such as Members of Parliament and Members of the Legislative Assembly is required to review the progress of relief work and measures taken to meet the drought conditions from time to time. The Supreme Court in its orders on the above-mentioned writ petitions, further directed that the function of the Committee would not only be confined to cases of starvation deaths but should also be for looking after the

welfare of the people of the District. During the Team's visit' nothing much was heard or could be known about the functioning of the District Level Natural Calamities Committee. Though the Government has in a subsequent communication intimated that representatives of voluntary organisations have been included as Members of the Committee and are participating in the deliberations on relief measures in the meetings, the Team is of the view that there is an apparent need for evaluating the functioning of the District Level Committee, particularly in the context of the demand made by the public leaders, that representatives of political parties should be associated at the grass-root level with the oversoeeing of relief measures.

16. The prevailling drought situation which would aggravate the drinking water problems in the coming months calls for a more intensive water supply and health care programme. The White Paper on Drought Situation brought out by the State Government mentions programmes for the sinking of new tube-wells and replacement of defective ones in rural areas and also augmentation of water supply in the urban areas. During the Team's visit, people spoke of depletion of ground water and non-functioning of many existing tube-wells expressed apprehension that even those functioning at present would be non-functional with further lowering of the water level in the coming months. Collectors expressed their worry over the non-availability of rigs to undertake boring of new tube-wells. In the Health Care area, the Team would consider provision of drinking water as a very high priority item and would recommed greater attention to the problem by the State Government. Non availability of water as well as shortage of fooder is affecting the livestock population. The Team has been informed of distress sale of cattle in the area. The programmes for water supply for human consumption as well as for the livestock, therefore, assume considerable importance.

17. Non-availability of doctors and other para-medical staff has been a major constraint in the provision of medical care to the people in these districts. A large number of posts of medical officers are vacant. Consequently, medical help and attention to the effected villagers have suffered. Though the Government has posted a number of doctors, few are in position. This is unfortunate. In order to improve the situation the Government has ordered that retired medical practitioners could be appointed afresh in these districts. As an incentive there would be no deduction of pensionary benefits from the salary they would draw on reappointment. The effect of these orders is yet to be felt. A special drive should be launched by the Government immediately to redeploy doctors and para-medical staff if necessary by withdrawing from districts not affected by the drought.

18. According to one of the petitions submitted to the Team during its visit, more than two lakh people have migrated from Bolangir district alone. Such a large scale migration will have its short-term impact in terms of accentuating the level of destitution and long-term impact in terms of slowing down the asset building relief measures. It was further alleged that middlemen were operating in the labour market for recruitment of cheap labour to work outside the State. The daily wage rates in Raipur are reported to have come down consequent on the migration of a large number of people from these districts. The District Labour Office does not have much idea of the extent of migration or of the alleged operation of labour contractors. As large scale migration from the district is already having adverse consequences on the provision of relief measures, the State Government should activate the District-level machinery for exercising necessary checks.

19. The Orissa Relief Code provides for the Collector to cause an inquiry into reports of death by starvation. It

stipulates that the inquiry "shall be conducted by a gazetted officer in the presence of the Sarpanch, Ward Member or some gentlemen of the village and the result of the inquiry reported within 48 hours." After the report of the inquiry report, the Collector shall review the relief measures undertaken in the area ... and should take further steps to alleviate distress in the area as far as possible." The proforma in which the report is submitted by the Inquiry Officer on reported starvation deaths, also contains information on the general conditions of the crop in the village. Some of the villages where alleged starvation deaths have taken place have reported a very high crop damage. For instance, Ingsa village in Agalpura Block in Bolangir District recorded 90 % crop damage. So has many other villages, as per the proforma. The Tahsiladar who inquired into deaths has stated "no" the question in the proforma whether he considers that the village was in acute economic distress. The Team wonders as to what the economic profile of the village could be, if it is not suffering from economic distress with a 90 % crop damage. This instance is quoted only to stress the right level of sensitivity and awareness needed to report on conditions of distress prevailing in the rural areas and to recommend effective relief measures as also the importance of objective and effective scrutiny of these reports. There were also allegations levelled by local people as well as the elected representatives regarding systematic neglect of these backward areas of Orissa by the State Government and also partisanship in the matter of sanctioning of relief to these districts via-a-vis the other coastal districts of Orissa. The Team is in no position to comment on the truth or otherwise of this. The Team, however, feels that this further reflects a sense of anger and alienation of the people of these areas which should be taken note of.

20. It is not out of place to mention that two writ petitions, one (OJC 12207/96) filed by Shri Pramod Kumar

Mishra, alleging callousness and inaction on the part of the State Government to address the plight of the people affected by the drought and shortage of drinking water in the State : and the other (OJC 13857/ 96) by Anukul Chandra Pradhan, Advocate, seeking orders for "setting up a judicial commission to investigate into starvation death" are presently pending in the Orissa High Court. It is understood that pre-admission hearing in both the cases is yet to be held.

21. In the foregoing paragraphs, the Team has indicated its findings on the allegations of starvation deaths and also given an assesment of the efficacy of the current relief measures. It has also on the basis of complaints received by it, highlighted some of the issues which need immediate and sustained attention. The Team during its visit to affected areas witnessed human suffering and destitution of an alarming magnitude. It shares the gloomy forebodings of many that unless large scale relief measures are expeditiously undertaken by the Administration, and vigorously implemented, the situation in the coming months is going to further worsen thereby causing very acute distress and suffering to the hapless people of the area. The Team earnestly hopes that such a situation will not come to pass.

(Shankar Sen)
Director General (I)

(R. V. Pillai)
Secretary General

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THE UNRESOLVED CASE OF KALAHANDI

(A NOTE BY KISHEN PATTNAYAK, THE FIRST PETITIONER AMONGST THE BUNCH OF PETITIONS AND MEMORANDA NOW UNDER THE SUPREME COURT'S CONSIDERATIONS)

The Kalahandi case (Supreme Court writ petition no 12847 of 1985) is a unique one in the sense that it remains and crops up in the Supreme Court again and again even after a judgement has been given. That is because either the judgement is not forceful and categorical or the administration is unwilling to implement the order. Even now the case is under the highest court's consideration.

It originated as a Public Interest Case in 1985 on the basis of a letter written by me to the highest court. The then Chief Justice P. N. Bhagwati gave a push to the case by ordering an evaluation of the situation by a team of social workers. The order created an atmosphere of great expectations of justice for the people of Kalahandi. However the Orissa Government was successful in stalling the enquiry by social workers. The case was buffeted from one bench to another and at the end a judgement was delivered on it (published in this book) on dt. 9-1-1989.

The Court did not accept the Orissa government's plea that there were no starvation deaths in Orissa. It also did not accept the submission that the State government was alert and taking all desirable steps. However, the judgement did not contain any specific guidelines that would make the government's measures more effective. The only positive direction was for a reconstitution of the Kalahandi District Natural

Calamities Committee. Henceforth the committee will have a few members from among the social workers of the District. The reconstituted committee would monitor the situations arising out of drought and other afflictions.

The government did induct a few social workers of its choice into the committee. But the committee even after reconstitution did not function effectively when in subsequent years the same problems arose in the district. Kalahandi in the mean time was reconstituted into two separate districts. The major part of the drought afflicted area of the undivided district lies in the Nuapada district.

No government sponsored committees will be able to take effective remedial measures in the drought prone areas unless the government is serious in its intention and secondly, the problems and approaches are clearly formulated. For example, what is a starvation death ?

How is the drought situation apprehended ? Is migration a serious problem ? What is a natural calamity ? (In case of Kalahandi what is a drought affected area ?) and at what stage should the government undertake specific relief measures ?

What is Drought ?

At present the Orissa government is guided by the rules of Colonial days to identify a drought affected area. The State government has proudly produced before the Court in which the crop-cutting method is described as "scientific". For the Khariff crop, crop-cutting can take place not earlier than November. The people and the press know about the problems of the drought as early as July and August. It is in these months that alternative arrangements for irrigation etc. have to be explored It is during this time that the landless labourers flee their places in search of work. In August even people with land holdings start migrating. So by the time the

government identifies the drought-affected areas the greater part of the calamity has already taken place. So the crop-cutting exercise is like a postmortem. If the government is serious about helping the people of drought-affected areas, it must evolve an approach to identify the drought-affected areas ?

What is Starvation Death ?

For the last fifty years, the government of India have been denying the occurrence of starvation deaths and famines. They do so conveniently because these words are undefined. The present practice of the Orissa Government is to produce a doctor's certificate saying that the stomach was not empty and the real cause was a disease related to stomach disorder. Since starvation is not fasting, the starving man does eat things which are not proper food. Starvation death can be proved by, among other things, the general standard of under-nutrition and malnutrition prevalent in the particular locality and the history of daily and monthly incomes. The National Human Rights Commission in its letter to the Orissa government (Publishd elsewhere in this book) has indicated this type of approach towards cases of starvation death.

One more factor is generally missed. Small farmers in these areas are generally found among the victims of starvation and malnutrition. The economic condition of the small farmers of these areas ought to be studied properly and the causes of their abnormal poverty understood.

Migration in Distress

The Orissa Government has often taken a cavalier attitude towards mass migration occurring in these most backward areas. The government equates these migrations as not the product of distress but of search for higher incomes by enterprising citizens. This is a sadistic propaganda on the part

of the rulers. Small farmers and manual labourers of the drought-prone areas never flee their own areas during the cropping season. This is a rule that can be easily verified. So all cases of mass migration from drought prone areas an indicator of drought and distress.

Whoever feels concerned about Kalahandi will have to develop a clear understanding about the foregoing problems.

The honourable Supreme Court since it has taken up the case of Kalahandi, must look into the basic flaws in the method and approach of understanding the problem.

For reasons of health, I am not in a position to directly pursue the matter. But Rabi Das, the foremost social worker working in the worst affected area of Kalahandi is not only acting intensively at the grassroots but has taken up the issue at the level of NHRC and Supreme Court. The present book compiling all the relevant reports, petitions, judgements etc. is his endeavour.

Bhubaneswar
Dt. 30th June 1998

Kishen Pattnayak

The wretched of Kalahandi

Every SUMMER, Kalahandi comes to life. In newspaper headlines. In local and national media. Drought, unemployment, displacement, migration, baby sale, starvation deaths et al. Every year, the same old story. Sadly, few agree on the causes. Fewer still on the solutions. It's like the five blind men of Hindustan, each describing an elephant by the touch of its limbs. Each thinking his is a perfect description None getting a feel of the whole.

Kalahandi's miseries have been popularly ascribed to low rainfall...and lack of irrigation facilities and uneven distribution of land. Others ascribe it to small land holdings. Still others blame money lenders, known locally as Gountias.

Newspapers have reported large-scale leakage of funds, non-implementation of anti-poverty schemes, apathy and thick-skinned attitude of politicians and officials perpetuating human miseries in the region.

Kalahandi drew the nation's attention in the' 80s when the media hype on the sale of a girl forced the then Prime Minister Rajiv Gandhi to visit the area. Since then, six Prime Ministers have visited the district. And hordes of bureaucrates followed. Several special schemes launched amid fanfare, huge funds allocated for development and innumerable projects announced. Drought relief emerged as a 'major industry'. Voluntary agencies flourished. Contractors made money. Middlemen prospered.

Mobile health units have been pressed into service time and again in Kalahandi and the neighbouring Nuapada

district, though poverty and disease are not unknown to the rest of the Eastern Ghats.

Yet, things have hardly changed. J B Patnaik, targeted by the media in the' 80s for shedding crocodile tears for Kalahandi's misfortune, remains the state's longest-serving chief minister.

Probe deeper. And the broblems of Kalahandi and its neighbouring districts are attributable much more to the causes other than sheer incompetence of the Patnaik government. Neither can they be attributed wholly to scarcity of rainfall or food. Officials have hardly made an effort to find the real reasons for the misery of the people. Most development projects, planned in the wake of VVIP visits, have failed to bring succour to the suffering. This clearly suggests something amiss in the Government's Strategic Planning. Others blame administrative apathy, corruption and leakcge of funds for the calamity.

Or why else does Kalahandi score where rest of Orissa doesn't? The region's per capita food production in 1990-91 was 331 kg against an an all-Orissa average of 253 kg. and all-India average was 203 kg. Kalahandi also exports Basmati rice. Yet, barely a quarter of that food is available to the locals.

Similarly, the average rainfall is not at a great variance with that of the state between 1977 and 1991, a long 15-year timespan. It ranged from 1,000 millimetre plus to 2, 214 mm in the same period, barring 1988 when Kalahandi recorded its lowest rainfall of 978 mm against the state average of 1,357 mm.

True, occasionally parts of Kalahandi receive less rainfall and suffer from drought. But this also holds good not just for the entire state, but the country as a whole.

Neither can the poverty be blamed on uneven land distribution or the number of holdings to total population.

Farmers belonging to medium category (4 heetare to 10 ha) and large category (10 ha and above) outnumber those in similar categories in the rest of the state.

Yet, people die of starvation. Even a committee appointed by the National Human Rights Commission (NHRC) confirmed last year that at least 12 persons in the neighbouring Bolangir district had starved to death. To discover what brings death to Kalahandi so easily, a peep into the history is necessary. Once, the entire economy of the Eastern Ghat districts, including Kalahandi, was based on agriculture and forestry. Both these elements sustained the lifestyle and culture of its people, predominantly tribals and Harijans. Once this base was destroyed, poverty became endemic and widespread. And the villagers were left with little to fend for themselves, particularly during the lean season.

At the time of the merger of the Kalahandi feudatory state with modern Orissa, in 1948, the district boasted evergreen high teak forests, comparable with those in Burma. But the forests disappeared with the abolition of the zamindari system. At the time of the merger, 40% of the district's cultivable land was under protective irrigation cover and khariff crop, even in the medium land holdings was fairly good. But merger, most indigenous micro-watershed irrigation source became the property of the state and many ponds were handed over to the gram panchayats. These were gradually neglected or completely destroyed. Not surprisingly, the latest government figures confirm that only 11 per cent of the district is now irrigated.

But India has its own bunch of experts among them politicians, bureaucrats, economists and mediamen. Just like the fabled blind men of Hindustan. Each touching a part. Surmising that his is the whole. Meanwhile, the poors of Kalahandi suffer. And they join the ever-growing queue of the wretched of the earth.

Nageswar Patnaik

The Greatest Human Failure

The vedicts of Hon'ble Supreme Court of India, Hon'ble High Court of Orissa, and the Hon'ble National Human Rights Commission's report clearly indicate to HUMAN FAILURE and nothing else. It is high time that the people in power, in opposition and in administration should admit their failure and moral responsibility of their failures and work for the future. Denial of this fact will not only harm the people and also one day act as bumerang on those who are not ready to accept their failure today.

Judgements of supreme Court, High Court and Report of National Human Rights Commission reveal the utter negligence and apathetic attitude of Government of Orissa. Calousness of administrative machinery resulting in peoples miseties, starvations, distress sell of agricultural produce and forest products.

On 9th. January 1989, The Hon'ble supreme Court of India gave its historic verdict on the reported case of starvation deaths and distress sell of agricultural produces in Kalahandi and Koraput. Honourable court observed that, "Written note submitted by Advocate General, have been briefly mentioned. There is no reason not to accept the statements made on behalf of the State of Orissa that, the measures stated above, are being taken, there can be no doubt that, it will alleviate to a great extent the miseries of the people of Kalahandi".

While concluding the judgement the Hon'ble Court had high hope and observed, "We hope and trust that in view of the prompt action that has been taken by the Government, soon the miseries of the people of these two district, will be over."

Three years after Hon'ble High Court of Orissa observed on 12th February 1992 that, "This hope has not materialised fully. We therefore call upon all the concerned persons to see that the hope expressed by the apex court on 9-1-1989 in the aforesaid case materialised at the earliest."

Further they observed, the report has brought to the fore the wretched condition in which the residents of the two districts spent their lives and we could feel amply rewarded if the task under taken by the Inquiring Judge would make the district administration more alive towards its responsibilities and more active in using various legal weapons available to its to put an end to the exploitation going on in these district.

Six years after High Court's suggestions, Hopes and nine years after the Supreme Court's historic verdict and Hope ; National Human Rights Commission observed on 17th February 1998 that, "The commission's team assented that, because of the very high level of deprivation existing in the area, along with extensive crop damage, malnourishment, inadequate income levels and insufficient outreach of relief measures, the possibilities of deaths having occured owing to prolonged malnutrition and hunger, compounded by disease could not be ruled out. Indeed, out of 21 deaths investigated by the team in the district of Nuapada, Kalahandi and Bolangir, 17 were attributable to such cases." Government of Orissa gave her view on only 6 of the above 21 cases. On the basis of the 6 cases, Government of Orissa defend itself on the floor of the house of Orissa Assembly but had no clue for other cases. Even the opposition failed to raise the matter in proper perspective except occassional outbursts.

In view of gravity of situation and in the face of human miseries, NHRC observed that, "special effor3ts had to be made to end the cycle of deprivation and malnutrition in the 'KBK districts'—even if wheather deaths had in fact occured as a result of starvation, there is a clear heed to set down, a practical programme of interim measure that could be clearly defined and agreed upon by all the principal players, a programme of enterim measures that could be readily understood and transparent, and for the implementation of which accountability and regular monitoring would be the give quo non."

The NHRC in its concluding observation prescribed nine interim relief measures to mitigate the miseries of the people of Kalahandi—Bolangir—Koraput district. It observed, "After due consideration. The interim measure could be undertaken over period of two years, subject to such period reviews as it may consider appropriate and necessary'.

Now we feel every concerned citizen wheather he is in government service, an intellectual, a people representatives, NGO or an activist, should be aware of the measures suggested by the NHRC so that, pressure group can be created at levels to create the government and administration machinery to deliver the goods to mitigate the human miseries and bring to the notice of the NHRC, the latest developments in KBK districts.

It would be most appropriate to conclude with the observation of Hon'ble Judge's Inquiry report that, "Leakage of funds can not also be ruled out. Similarly there are instances of non-use and misuse of funds in anti-poverty schemes. Poverty continues as before, the misery being aggravated by droughts".

What a naked truth indeed ? but also the culprits go unpunished. Indeed THE GREATEST HUMAN FAILURE IN FIFTY YEARS OF INDIAN INDEPENDENCE.

Come togather, bring to the notice of the Hon'ble Courts and the NHRC from time to time, otherwise we will also be branded as criminals by our posterity for our failurs to rise to the occassion as intellectuals, NGOs, activists, government servents, peoples representatives or which ever field we are in.

By raising our wish we will loose nothing but our mental inaction and fear.

Dr. FANINDAM DEO
PURUSOTTAM SINGH THAKUR

Curse Inflicted by Rulers

Ch. Pratap K. Misra,
Advocate

The abbreviation 'KBK' has come into prominance in the Media and political circles as well as in different Legislative forums denoting the districts of the erstwhile Kalahandi, Bolangir and Koraput Districts and synonimous with poverty, starvation, famine and neglect. Many schemes have been framed for the purpose to eradicate the poverty of the people of these districts and to bring the people to the national main stream. Huge amount of money has been earmarked and allegedly spent for upliftment of these people. A number of voluntary organisations have chosen these districts as their base for assisting the poverty striken, un-educated, un-employed and starving people since 1985 when the then Prime Minister announced that these districts will be given special attention for the avowed object for eradicating their poverty, ill health and un-employment, for providing them with drinking and irrigated water and establishing schools, improving and laying down new roads for better communication. But persons who have visited these districts would find that none of the avowed objects has been fulfilled even if huge sums have been allegedly spent for the aforesaid purposes during the last decade.

The question arises where the money have gone and this point has been agitated in different Legislative forums and Media and the successive Governments of the State and Centre have been evasive in meeting/explaining/rebutting these allegations. The money allegedly spent in these districts under nomenclature of the different schemes and projects has gone down the drain or to the pocket of specific few individuals without any benefit to the general public of these districts. The people are still suffering from poverty, dying in

diseases like Malaria, Cholera, and diarrhoea as the health facilities extended is only on paper without actually reaching the rural persons of these districts; whereas the workers of voluntary organisations have reached some pockets of these districts in which they are doing wonderful job at least to minimise the health hazards.

The unprecedented famine in 1966 is shadowed by the famine which struck Kalahandi district specially in the year 1987 which is again shadowed by the un-precedented famine in the year 1996. Some people who have gathered and formed irrespective of their political affilation or detachment, Gana Sangram Parishad which sent a fact finding team empowering them to find out the actual problem and suggest the short term as well as long term remedies. Their effort is reflected in a Memorandum which was submitted by the said organisation to the Chief Minister of Orissa wherein the said organisation has given concrete proposal for short term as well as long term measures for minimising the miseries of the poverty stricken people of the present districts of Kalahandi, Nuapara and Bolangir. The said fact finding team also investigated into the alleged starvation deaths and came out with a finding that there are already deaths due to starvation prior to their visit to the affected areas in these districts and bringing forth the misery of the people of these areas, But as usual, these suggestions given in the Memorandum submitted by the renowned and credible persons of public life and society was given its burial by the State Government.

The misery of these people was also brought to focus of the people of India much before 1996 when Mr. Kisan Pattnaik and others filed a petition before the Hon'ble Supreme Court and the Hon'ble Supreme Court delivered a judgement on 9-1-89 wherein Their Lordships of the Apex Court have made same concrete suggestions after finding out that there is substance of allegation regarding the report of starvation death. But this judgement / suggestion given by the Apex Court, as

usual, becomes a piece of another paper with the State Government by the new ruling politicians as no steps in accordance with these suggestions of the Hon'ble Apex Court were given effect to.

Subsequently, some persons of the State filed another set of Writ Applications before the Hon'ble Orissa High Court bringing to the notice of the Hon'ble High Court the different press reports regarding starvation deaths and the Hon'ble Court appointed Mr. Baidyanath Misra, a retirrd District Judge having a reputation for his uprightness and integrety to enquire into the alleged starvation deaths and the said Baidyanath Misra submitted an enquiry report on the basis of which the Hon'ble Court disposed of the Writ applications giving their finding on the allegation of starvation deaths, sale of child, exploitation, mass exodus and also giving their suggestions regarding action and remedial measures to be taken up for avoiding the miseries of these people. But all these binding directions also have not been carried out as usual by the successive Governments in the State.

That after the onslaught of the un-precedented famine in the year 1996, there are reports of starvation deaths and distress sale of children. The then Union Minister of Agriculture has requested the National Human Right Commission to enquire regarding the allegation of starvation deaths and the said NHRC gave an interim report concluding that the allegation regarding death due to starvation and related diseases is factually correct. This also did not arouse the conscience of the persons ruling the State and politicians and people of the State of Orissa denied or opposed such findings given by the National Human Right Commission in its interim report.

A Writ application was filed by a voluntary organisation regarding starvation death due to famine in 1996 in the Apex Court and the NHRC was directed by the Apex Court to enquire into the matter and submit their report to the Apex

Court and while hearing of the aforesaid matter on the said allegation, was being enquired by the NHRC as per the direction of Their Lordships of the Apex Court. Mr, Rabi Das, one of the persons working in the said area since more than a decade, filed pettitions and Affidavits stating therein the specific facts which are within the knowledge of himself and gathered through the different persons worksng for voluntary organisations.

Though gist of all these decisions, and reports publisbed by different newspapers, they are not reported in any Law Journal for reference to be looked into at the time of future litigations. As such, the laudable efforts by the publisher of this book to publish the aforesaid judgements, and reports will serve the purpose if the conscience of the people of Orissa as well as whole of India 'is aroused after reading this book so that they will take appropriate steps for compelling the Ruling class to take immediate actions against persons responsible for flouting these judgements and reports and also misutilising the funds earmarked for upliftment of the people of these districts and also in future will make efforts to properly spend the amounts allotted for eradication of poverty, ill health, unemployment and also to help providg with drinking water and water for irrigation for the famine striken people of these districts.

In absence of appropriate word for the laudsble efforts of the people who are directly engaged in doing the work in these areas among the starving and poverty striken, people, I only convey thanks to you Mr. Das for your sincerity and your commitment.

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